

Prohibition of Confiscation of State-Owned Immovable Goods Against the Decision of the State Administrative Court that Has Been Inkracht

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ARTICLE INFO

Keywords:

Prohibition,
Confiscation,
State Property,
State Administrative Court,
Inkracht.

Article history:

Received 2024-03-03

Revised 2024-05-14

Accepted 2024-06-30

ABSTRACT

State Administrative Law gives the state the right to resolve administrative disputes at the PTUN. However, this is different when faced with the problem of state property, especially state land, which in Article 50 of Law No. 1 of 2004 concerning State Treasury is actually prohibited regarding confiscation of state property including state-owned land. The formulation of this research are: 1) How is the Implementation of the Prohibition of Confiscation of Immovable State Property Against Inkracht State Administrative Court Decisions; and 2) How are the obstacles to the Implementation of the Prohibition of Confiscation of Immovable State Property Against Inkracht State Administrative Court Decisions. The research method used is Normative law. The results and discussion found that the implementation of the PTUN's decision regarding the confiscation of state property is hindered by the provisions of Article 50 paragraph (1) of Law No. 1 of 2004 concerning State Treasury so that the provisions need to be changed. Then, the obstacle that arises in terms of implementing the decision is the absence of a process that binds state officials or bodies to comply with the PTUN decision in Law No. 5 of 1986 concerning State Administrative Court. This is in fact very contrary to the principle of legal objectives desired by Gustav Radbruch who mentioned 3 (three) legal objectives, namely legal certainty, legal benefits, and legal justice. Therefore, it is necessary to amend the provisions of Law No. 1 Year 2004 on State Treasury and Law No. 5 Year 1986 on Administrative Court to accommodate the decision of the Administrative Court to execute state property.

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1. INTRODUCTION

The State Administrative Law gives the state the right to resolve administrative disputes at the State Administrative Court. After the PTUN decision became *an inkracht*, the protection of state rights became important (Habibi, 2019). This research can explore how the prohibition of confiscation of state-owned immovable goods even though there is already a Decision against it. Complex Legal Issues: The implementation of state administrative law often involves complex problems, especially when it comes to state property. In the context of the *inkracht*, questions arise about how immovable goods belonging to the state are treated and whether there are exceptions or certain situations in which confiscation is still possible. This study can see the extent to which the legal system regulates the prohibition of confiscation of state-owned immovable goods after the PTUN decision has permanent legal force, and the extent to which its implementation is in accordance with applicable law. This is related to the legal principles that underlie the implementation of state administrative law. This research can also take concrete case studies related to the implementation of the ban on confiscation of state-owned immovable goods after the decision of the PTUN *Inkracht*. This case study can involve real cases to illustrate the challenges and problems that may arise in the implementation of the rule. Protection of Individual Rights. On the other hand, the study can also consider how the ban on the confiscation of state-owned immovable goods affects the rights of individuals or other entities involved in such administrative disputes. In cases where individual rights are affected, there needs to be a balance between the rights of the state and the rights of the individual. Research on the implementation of the ban on the confiscation of state-owned immovable goods against the decision of the PTUN *Inkracht* is important to understand how the state administrative law system operates and protects the rights of the state and individuals. In addition, this kind of research can also provide insights into possible improvements in the legal system related to state administration. Confiscation of collateral and confiscation of execution of state-owned property are prohibited. Article 50 of Law Number 1 of 2004 concerning the State Treasury states that any party is prohibited from confiscating for (Yustiawan, 2020):

1. money or securities belonging to the state/region, both in Government agencies and in third parties;
2. money that must be paid by a third party to the state/region.
3. movable goods belonging to the state/region, both in government agencies and third parties;
4. movable goods and other material matters belonging to the state/region;
5. property of a third party that is paid off by the state/region that is necessary for the implementation of government duties.

The above provisions make the Court Decision impossible to implement if there is a legal case related to State Land. Based on this, the author is interested in taking the title: The Implementation of the Prohibition on the Confiscation of State-Owned Immovable Goods against the Decision of the State Administrative Court that has been *inkracht*. To analyze what problems occur against the gap between *dass sain* and *dass sollen* above.

Related to the above background, the formulation of the problem in the study is: How is the Prohibition of Confiscation of Immovable Goods Owned by the State Against the Decision of the State Administrative Court that has been *Inkracht*.

2. METHODS

This type of research is Normative Law research, carried out by approaching Laws and Regulations, Legal Principles and Legal Theories by examining the formulation of the problem to be researched as well as providing an overview and analysis of the Prohibition of Confiscation of State-Owned Immovable Goods against the Decision of the State Administrative Court that has been *inkracht*.

3. RESULTS AND DISCUSSION

3.1 Prohibition of Confiscation of State-Owned Immovable Goods Against the Decision of the State Administrative Court that Has Been *Inkracht*

The state administrative court is a court that has the duty and authority to adjudicate all kinds of state administrative cases and government behavior carried out through state administrative actions and decisions. (Naelufar, 2013) In Law No. 5 of 1986 concerning the State Administrative Court, the authority is given to the PTUN to adjudicate State Administrative disputes which is explained in Article 1 number 10 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Court which reads that "*State Administrative Disputes are disputes arising in the field of state administration between persons or civil legal entities and administrative bodies or officials state, both at the central and regional levels, as a result of the issuance of state administrative decisions, including personnel disputes based on applicable laws and regulations.*" The article requires the context of state administrative disputes which are only in the form of state administrative decisions which are the main object of the case in the State Administrative Court. (Ashfiya & Erliyana, 2020) However, there is an expansion of the authority of the PTUN to adjudicate the actions of state administrative officials as regulated in Article 1 number 8 of Law No. 30 of 2014 concerning Government Administration which reads that "*Government Administrative Actions, hereinafter referred to as Actions, are the actions of Government Officials or other state administrators to do and/or not commit concrete acts in the context of the administration of government.*" The article indicates that the definition of state administrative action is interpreted as the act of an official to do and/or not do a concrete act or that provides legal consequences in order to carry out government functions in a narrow sense. (Kusdarini, 2020) Thus, from these two articles, it can be interpreted that the authority of the PTUN can adjudicate the KTUN and the actions of government administrative officials.

Then it is related to confiscation which is closely related to civil cases. (Fendri & Mannas, 2021) This is because the regulation of the foreclosure is explicitly regulated in Article 227 jo. Article 261 jo. Article 206 RBg. Rules regarding confiscation can be found in Article 227 together with Article 261 and Article 206 RBg. (Effendi, 2007) From the definition of confiscation, it can be understood that the act of confiscation is a legal step that is very rarely carried out, so its implementation must be careful and careful. This step must be based on strong facts and evidence so as not to harm the parties affected by the confiscation. (Habibullah, 2019) In civil procedure law, several related terms are known, such as bail confiscation - *conservatoir beslag* and *revindicatoir beslag* as well as execution confiscation. Confiscation of collateral is the confiscation of goods that are the object of a lawsuit or goods that are in dispute temporarily as collateral during the case examination process. Meanwhile, *revindicatoir beslag* is the confiscation of the plaintiff's property that is in the possession of the defendant. (Subekti & Marbun, 2023)

Currently, the possibility of confiscation of state goods does not only occur in civil and criminal cases, but can also occur in administrative disputes. (Subekti & Marbun, 2023) This happened with the implementation of Law No. 5 of 1986 concerning the State Administrative Court. This court will specifically examine and adjudicate conflicts of interest between the government and non-state legal subjects such as individuals and *rechtspersons* as a result of the issuance of decisions (*Beschikking*) by state administrative bodies or officials. (Anggoro, 2016)

Given that the core of the dispute at the PTUN is the decision of the TUN Agency or Official, (Krisnawati et al., 2023), in the event that the plaintiff's lawsuit is granted, according to the provisions contained in article 97 paragraph (9) of the PTUN Law, it is stated that the obligations that must be fulfilled by the TUN Agency or Official, namely: a. Revocation of the TUN Decision; b. Revocation of the TUN Decision in question and issue a new TUN Decision; or c. Issuance of the TUN Decision in the event of a lawsuit related to with applications that are rejected or deemed to be rejected.

In its development, a lawsuit at the PTUN can include a payment of compensation that must be paid by the TUN Agency or Official. (Fauzan, 2022) Regarding this compensation, it has been regulated in detail in Article 120 paragraph (2) of the PTUN Law which states that "*A copy of the Court's decision*

containing the obligation to pay compensation as referred to in paragraph (1), shall also be sent by the Court to the State Administrative Agency or Official who is burdened with the obligation to pay such compensation within three days after the Court's decision obtains permanent legal force." The article indicates that the PTUN court decision can include compensation charged to TUN officials or bodies in the event that an administrative violation committed by it occurs.(Puspitasari et al., 2019) However, this is further regulated in the Government Regulation as mandated in Article 120 paragraph (3) of the PTUN Law which reads that "The amount of compensation along with the procedures for implementing the provisions as referred to in Article 97 paragraph (10) is further regulated by Government Regulation."Then Government Regulation No. 43 of 1991 concerning Compensation and Procedures for Its Implementation in the State Administrative Court was born which regulates in detail about compensation in the State Administrative Court. According to Article 1 paragraph (1) of Government Regulation No. 43/1991, it requires the definition of compensation which is defined as the payment of a sum of money to a person or civil legal entity on the burden of the State Administrative Agency based on the decision of the State Administrative Court.(Tjandra, 2013) This is due to the material losses suffered by the plaintiff. Then compensation is explained in Article 1 paragraph (2) of Government Regulation No. 43/1991 which explains that compensation is the payment of a sum of money to a person at the expense of the State Administrative Agency because the decision of the State Administrative Court in the field of government cannot or is perfectly implemented by the State Administrative Agency.(Tjandra, 2011) From these two articles, it is required that there be a return of rights to the plaintiff in the form of compensation or compensation when the evidence from the plaintiff is proven that there is an administrative violation.

Furthermore, Government Regulation No. 43 of 1991 also regulates the minimum limit of the amount of compensation and compensation. For compensation, it is determined that the minimum is Rp. 250,000 (two hundred and fifty thousand rupiah) and a maximum of Rp. 5,000,000 (five million rupiah) by taking into account the actual circumstances as stated in Article 3 of Government Regulation No. 43/1991 which reads that "The amount of compensation that the plaintiff can obtain is at least Rp. 250,000 (two hundred and fifty thousand rupiah), and the maximum is Rp. 5,000,000 (five million rupiah), taking into account the real situation."This provision is indirectly binding from the TUN officials or bodies affected by the PTUN decision which mentions compensation or compensation to the plaintiff for the treatment that has been carried out by him.

With the Government's obligation to pay a certain amount of compensation and compensation to the plaintiff in the form of money, basically the PTUN judge is authorized to confiscate as a form of guarantee for the implementation of court decisions on state-owned goods.(Amancik et al., 2021) This authority stems from the existence of the freedom of judges as the principle of the state of law itself which is desired in the principle of *the state of law rechtstaats* as believed by FJ Stahl. He said that there are 4 (four) characteristics of the state of law, namely 1) protection and enforcement of human rights; 2. The existence of a government based on the law; 3) there is a separation of powers; and 4) the existence of administrative justice in safeguarding the human rights of citizens who are violated by government treatment.(Handayani & others, 2016) The context of this can be adopted from the existing procedures in civil justice in HIR and RBg.

According to the provisions of Article 116 paragraphs (1) to (6) of the RBg, it is stated that after the pronouncement of the court decision that has been *inkracht*, it will be served to the parties no later than 14 days. In the event that the defendant does not carry out the obligations as stated in the court verdict, the plaintiff asks the court to immediately carry out his obligations through the determination of the chief judge for the confiscation by the bailiff.(Sitompul & Ansari, 2023) If the defendant does not have good faith to implement the court decision, then the chairman of the court can send a letter to the defendant in accordance with the level of position so that his subordinates obey the content of the court decision. If the defendant still does not implement the court decision, then the court asks the President as the holder of the highest government power to order his apparatus to fulfill the contents of the court decision that has been *incriminated*.

However, there is a conflict of norms at the legal level that does not allow the confiscation of state-owned batrang. (Lailam, 2014) This is regulated in Article 50 of Law Number 1 of 2004 concerning the State Treasury stating that any party is prohibited from confiscating money or securities belonging to the state/region, both in government agencies and in third parties; 2) money that must be deposited by a third party to the state/region; 3) movable goods belonging to the state/region, both in government agencies and third parties; 4) movable goods and other material matters belonging to the state/region; and 5) third-party property that is paid off by the state/region that is necessary for the implementation of government duties. The context of the article does expressly prohibit the implementation of confiscation of state property even though there has been a court decision that has permanent legal force as well as the decision of the PTUN that has been *incriminated* for execution. (Butarbutar, 2022)

Therefore, it is necessary to amend the Article to accommodate the decision of the PTUN with permanent legal force when it is found that there is a necessity to confiscate state property from the PTUN decision that has permanent legal force. The amendment can be made by the House of Representatives together with the President as based on the authority of attribution in Article 20 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads that "*Every draft law discussed by the People's Council and the President to obtain mutual approval.*" Thus, the PTUN decision can confiscate if there is indeed an exception to the regulation that with the PTUN decision that has been *inkracted*, then the confiscation can be carried out.

3.2. Analysis of Authority and Obstacles to the Implementation of the Prohibition on the Confiscation of State-Owned Immovable Goods against the Decision of the State Administrative Court that has been *inkracht*

The context of the constraints can be seen from the authority of the PTUN which is still a toothless tiger when faced with the problem of the execution of the PTUN decision. (Quarterly & Sh, 2016) The execution of the PTUN is currently still not a definite bond and a definite guarantee of how it will be implemented. The absence of this legal certainty raises contemporary problems regarding the execution of PTUN decisions which are highly dependent on the good faith of the state administrative officials who issued the decisions and those who are subject to PTUN decisions. Especially when the official becomes a defendant in the decision, it should be an obligation for the official to implement the decision. (Susilo, 2013) However, what is clear is that when the defendant is indeed defeated in the state administrative lawsuit, the defendant can be asked for a definite and clear execution.

The absence of this execution provision is very contrary to the theory of legal objectives desired by Gustav Radbruch which states that there are 3 (three) legal objectives, namely legal certainty, legal utility, and legal justice. (Muslih, 2017) Legal certainty can be seen from the clear legal provisions and provides a sense of legal certainty in society. (Hernawati & Suroso, 2020) The benefits of law can be felt by the community for the enforcement of a law or when a court decision is decided, then the benefits of law can be felt by the parties and the community. (Hazmi, 2021) The legal benefits that can be felt by the community can be seen in the Constitutional Court's decisions and the decisions of the PTUN which are *erga omnes*. (Maulidi, 2019) Then in the context of legal justice, it can be seen when the enactment of a law or court decision can satisfy both parties, where justice can be very subjective. (Rifai, 2020) Thus, the three elements must synergize, especially in terms of making norms related to the PTUN decision which is currently still a toothless tiger.

If you look at the provisions for the execution of PTUN decisions that are still clinging to the good faith of the government, of course this will be difficult when faced with the problem of executing state property, especially in the case of state land that is a Right to Use. This context provides limitations to the PTUN to carry out execution, especially because of the provisions of Article 50 paragraph (1) of Law No.1/2004 which also requires the existence of state property that cannot be confiscated by the Court's decision. This actually limits the PTUN from confiscating.

This conflict of norms is certainly an obstacle, especially in terms of the implementation of the PTUN decision that has been *incriminated* to the Supreme Court. (ENDANG & MA'SUM, 2022) In this

context, of course, a change in the law can be made by the House of Representatives when it is necessary and there is a clear conflict. (Dalimunthe, 2017) This is because it will cause legal uncertainty in the future. This context of uncertainty must be overcome in order to realize law enforcement based on legal certainty. (Hazmi, 2021) Moreover, judges in Indonesia tend to be the mouthpiece of the law so that when the law is uncertain, it is necessary to make changes to the State Treasury Law so that the State Treasury can confiscate, especially regarding the state land itself.

4. CONCLUSION

The State Administrative Court (PTUN) has the authority to adjudicate cases related to state administration and government actions carried out through administrative decisions and actions. This expansion of authority also includes the actions of state administrative officials, as stipulated in Law No. 30 of 2014 concerning Government Administration. The PTUN also plays a role in examining disputes between the government and non-state legal subjects, assessing the decisions or actions of state administrative officials, and ordering certain actions in the event that a lawsuit is accepted. The PTUN decision may include the payment of compensation to the aggrieved party, in accordance with Article 120 paragraph (2) of the PTUN Law, and the rejection of unlawful administrative actions, as a result of administrative violations. However, there is a provision in the law that prohibits the confiscation of state property. Therefore, changes to the regulation are needed to allow the PTUN to confiscate state property if necessary according to a court decision.

Obstacles in the execution of PTUN decisions create legal uncertainty that is contrary to the desired legal objectives, especially legal certainty, legal utility, and legal justice. The absence of clear provisions regarding execution puts the PTUN in a difficult position, depending on the good faith of the government and the defendant. This is especially seen in the case of the execution of state property, such as state land that is a Right to Use, which cannot be confiscated according to Article 50 paragraph (1) of Law No.1/2004. This conflict of norms is an obstacle in the enforcement of PTUN decisions that have been *inkracht*. Changes in the law by the House of Representatives are needed to overcome this uncertainty, especially in terms of confiscation, considering that judges in Indonesia tend to follow existing laws. With these changes, the PTUN will have the ability to carry out executions, especially in the case of state land, to ensure more precise law enforcement. Suggestions that can be given from this study are: 1) Amending the provisions of Law Number 1 of 2004 concerning the State Treasury to exclude the confiscation of state property when faced with a court decision that has permanent legal force; and 2) Amending the provisions of Law Number 5 of 1986 concerning the State Administrative Court to accommodate the process of executing decisions with more legal certainty.

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