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# Forced Money (*Dwangsom*) in the Indonesian State Administrative Court System and *Astreinte* in French *Conseil d'État*

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## Abstract

*The administrative court system in Indonesia shares fundamental similarities with the state administrative court system in France. This study aims to conduct a comparative analysis of the judicial systems in Indonesia and France, specifically focusing on examining the regulation of forced money penalties (dwangsom) in Indonesia. It has been around for about fourteen years since Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court ("State Administrative Court Law); there are no implementing regulations, thus hindering the imposition of forced money in the decisions of the State Administrative Courts in Indonesia. As per the author's assertion, this circumstance can potentially diminish the effectiveness of the State Administrative Courts in Indonesia, undermining their ability to enforce judgments. In the context of legal matters, it is noteworthy to mention that the French Conseil d'État has taken measures to govern the issue of forced money penalties (astreinte), specifically regarding their execution and associated costs. The study used normative juridical. It also used a comparative method to normative juridical methods to analyze Indonesia's principles, norms, and legal system. Study findings indicate the urgent need to establish regulations on imposing forced money penalties within the Indonesian Administrative Court. This is crucial to mitigate challenges associated with enforcing forced money decisions, minimize financial losses resulting from errors in official services, and address the legal uncertainty surrounding the determination of forced money costs.*

**Keywords**: *Dwangsom; Forced Money; Conseil d'État; State Administrative Court.*

## Introduction

Establishing a state administrative court, per its defined responsibilities and tasks, grants it the power to deliver judicial rulings against institutions or state officials engaging in administrative infractions within their professional obligations.[1] Establishing the State Administrative Court has emerged as a critical indicator in assessing the preeminence of the Indonesian legal framework within the framework of the rule of law (*rechtsstaat*).

Indonesia, a nation that follows a civil law legal framework, can establish a well-defined and precise legal-political system. This entails not solely concentrating on the activities of governmental entities responsible for issuing administrative decisions but also encompassing all government actions that deviate from statutory regulations. Therefore, there is a requirement for strengthening the authority of the state administrative judiciary.[2]

According to Friedrich Julius Stahl, the State Administrative Court holds significant importance within the rule of law framework,[3] specifically in its role in dispute resolution. The establishment of administrative justice was driven by the objective of safeguarding the rights of individuals, thereby preventing the arbitrary exercise of state authority in making decisions that may have adverse consequences. This is in line with the principle of the rule of law, which emphasizes the supremacy of legal norms, as well as various other principles, for example, equality before the law, the principle of legality (due process of law), protection of human rights, democracy, functioning as a means of realizing state goals (welfare *rechtsstaat*), and transparency and social control.[4]

Like other judicial institutions, the Administrative Court encounters a common challenge when settling disputes and precisely executing decisions. Execution refers to the procedural and contextual aspects employed by state authorities to facilitate the implementation of a judge's decision in cases where the party lost in litigation demonstrates an unwillingness to abide

[1] Ahmad Dahlan Hasibuan and Ferry Aries Suranta, "Faktor Penyebab Tidak Dilaksanakannya Putusan Pengadilan Tata Usaha Negara dan Upaya Penanggulangannya," *Journal Mercatori* 6, no. 2 (2013): 134, https://doi.org/10.31289/mercatoria.v6i2.637.

[2] Abdul Kadir Jaelani, "Implementasi Daluarsa Gugatan Dalam Putusan Peradilan Tata Usaha Negara di Indonesia," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 18, no. 2 (2019): 62, https://doi.org/10.31941/pj.v18i2.1090.

[3] Putera Astomo, "Eksistensi Peradilan Administrasi Dalam Sistem Negara Hukum Indonesia," *Jurnal Yuridis Fakultas Hukum UPN Veteran Jakarta* 1, no. 1 (2014): 48, https://doi.org/10.35586/.v1i1.140.

[4] Suteki Suteki, "Hegemoni Oligarki dan Ambruknya Supremasi Hukum," *Crepido: Jurnal Mengenai Dasar-Dasar Pemikiran Hukum Filsafat dan Ilmu Hukum* 4, no. 2 (November 30, 2022): 163, https://doi.org/10.14710/crepido.4.2.161-170.

by the substance of the decision within the specified timeframe.[5]

To address these challenges, the government has implemented efforts to enhance the capacity of the institutions responsible for executing the decisions of the State Administrative Court. The provisions outlined in Article 116 Paragraph (4) of Law Number 51 of 2009 concerning the Second Amendment of Law Number 5 of 1986 concerning State Administrative Courts ("Administrative Court Law") regulate the subsequent actions taken against government officials who do not implement state administrative court decisions. These actions include the imposition of forced money, the enforcement of administrative sanctions, announcements in local printed mass media by the Court Registrar, and the referral of the matter to the President and the House of Representatives.

Implementing this forced money decision aims to enhance the existing provisions within the Administrative Court Law. Specifically, it entails requesting the Court to order the defendant to comply with the decision, followed by the Court notifying the defendant's superiors to instruct the defendant's officials to execute the decision. Suppose the defendant's superior agency fails to inform the defendant's official. In that case, the Court's Chairman may submit the matter to the President, who will order the official to implement the Court's decision.

According to Article 116, Paragraph 7 of Law Number 51 of 2009, the specific details about the prescribed sum of compulsory monetary payments, the various forms of administrative penalties, and the procedures for executing the charge of forced money amounts and administrative punishments are governed by legislation. Despite a span of over fourteen years after the enactment of these regulations, no legal product has been established to manage the mechanism for the payment of forced money. The objective of achieving legal certainty about implementing State Administrative Court decisions, as stipulated in Article 116 of Law Number 5 of 1986, Law Number 9 of 2004, and Law Number 51 of 2009, has yet to be achieved. It is rare for administrative court judges to issue rulings mandating forced money within the framework of reinforcing the executable decision.

In France, a comparative analysis reveals the presence of two distinct judicial systems. The administrative justice framework revolves around the institution known as the Conseil d'État, which possesses extensive authority in administrative and judicial domains. Therefore, the development of state administrative law is significantly shaped by the decisions influenced by

[5] Enrico Simanjuntak, "Prospek Ombudsman Republik Indonesia Dalam Rangka Memperkuat Pelaksanaan Eksekusi Putusan Peradilan Tata Usaha Negara," *Jurnal Hukum dan Peradilan* 3, no. 2 (July 31, 2014): 168, https://doi.org/10.25216/jhp.3.2.2014.163-176.

council judges, establishing a unified set of legal jurisprudence.[6]

The term forced money in France is called *astreinte*, defined as "a means of coercion where a person is ordered to pay a sum of money for each period of delay in fulfilling an obligation resulting from a court decision."[7] Or more precisely, "a monetary penalty that is proportionate to the number of days of delay, imposed on a person who fails to comply with a fixed-term obligation."[8] The astreinte, thus, is a legal mechanism that can be used in various contexts to ensure compliance with obligations or court decisions.[9] It serves as a means of coercing individuals or entities to fulfill their obligations in a timely manner.

Regarding the regulation of forced money (*astreinte*), the basis for filing a lawsuit with the Administrative Court in France is generally divided into two types of cases, namely:

1. A lawsuit addressed in a request for annulment of a state administrative decision or administrative deed, commonly referred to as a lawsuit for cancellation or called "*recours en exces de pouvoir*";[11] and
2. A lawsuit requesting two forms of annulments, namely 1) a request for annulment of a state administrative decision product and 2) a claim for payment of compensation for government legal actions that cause losses, also known as a claim for compensation or called "*recours en plein contentiuex*."

Moreover, notable distinctions arise regarding implementing forced money, known as "*astreinte*," between France and Indonesia. A noteworthy difference exists within the error theory, wherein responsibility is categorized into personal fault (*faute personelle*) and administrative fault (*faute de service*).[12]

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[6] Seerden Rene and Frits Stroink, *Administrative Law of the European Union, Its Member States and the United States*, 2nd ed (Antwerpen: Netherlands:Intersentia Uitgever, 2007), 75.

[7] In french: *"Moyen de contrainte qui consiste à condamner une personne à payer une somme d'argent par période de retard dans l'exécution d'une obligation résultant d'une décision de justice"*. Cited from Larousse dictionary, https://www.larousse.fr/dictionnaires/francais/astreinte/5988

[8] *"Condamnation d'ordre pécuniaire, proportionnelle au nombre de jours de retard, prononcée contre une personne qui ne s'est pas soumise à une obligation à échéance fixe."* Cited from https://www.cnrtl.fr/definition/astreinte

[9] This declaration exclu the using of astreinte in French labor law, which is defined as: *"the period of availability of an employee to their employer, whether during working hours or outside of them, in order to be ready to intervene in a specific work situation when required."* Cited from https://www.cnrtl.fr/definition/astreinte

[11] Giuseppe Franco Ferrari, "The Contracts of Public Administrations," *Revista de La Facultad de Derecho de México* 68, no. 271 (June 23, 2018): 244, https://doi.org/10.22201/fder.24488933e.2018.271.65340.

[12] Dezonda Rosiana Pattipawae, Hendrik Salmon, and Natanel Lainsamputty, "Due To The Legal Non-Compliance of State Administrative Officers With The Implementation of Forced Money (Dwangsom) In The Execution of State Administrative Decisions," *SASI* 28, no. 2 (May 7, 2022): 183, https://doi.org/10.47268/sasi.v28i2.730.

This differentiation allows for a more precise allocation of forced money (*astreinte*) towards state agencies or individual officials who committed the fault. In general, the French "faute personnelle" (personal fault) results in the personal liability of the public servant before the judicial courts, whereas "faute de service" (fault in the performance of official duties) allows for the liability of the administration itself to be pursued before the administrative courts.[13]

The absence of formally established implementation regulations for imposing forced money penalties in Indonesia has resulted in disparities in interpreting Administrative Court rulings with binding legal authority (*in kracht van gewijsde*).[14] This situation leads to favoritism towards legal certainty as the ability of the State Administrative Court to enforce forced money judgments is seen as inadequate, posing challenges in effectively overseeing state administration officials' actions[15] from a legal and societal standpoint.

A clear legal framework is necessary to implement forced money executions. Therefore, it is imperative to conduct a comparative analysis with the French Conseil d'État, which operates under a similar legal system known as civil law. However, it is worth noting that the French state differs in applying administrative court decisions grounded in legal precedents. This historical context serves as a reference point for analyzing and contrasting the procedures of imposing forced money, specifically *dwangsom* in Indonesia and *arstreinte* in France.

This study employs a normative legal approach and comparative method within the administrative court systems of Indonesia and France to examine the rules and norms[16] governing forced money regulations (*dwangsom; arstreinte*). The data collection methods encompass library research[17] and document search. The utilized data consists of secondary data,

[13] https://www.weka.fr/administration-locale/dossier-pratique/police-municipale-dt29/distinguer-une-faute-de-service-d-une-faute-personnelle-1901/#:~:text=De%20fa%C3%A7on%20tr%C3%A8s%20g%C3%A9n%C3%A9rale%2C%20la,m%C3%AAme%20devant%20les%20juridictions%20administratives.

[14] Dezonda Rosiana Pattipawae, "Pelaksanaan Eksekusi Putusan Pengadilan Tata Usaha Negara Di Era Otonomi," *SASI* 25, no. 1 (August 24, 2019): 99, https://doi.org/10.47268/sasi.v25i1.151.

[15] Marten Bunga, "Tinjauan Hukum Terhadap Kompetensi Peradilan Tata Usaha Negara dalam Menyelesaikan Sengketa Tanah," *Gorontalo Law Review* 1, no. 1 (April 23, 2018): 44, https://doi.org/10.32662/golrev.v1i1.155.

[16] David Tan, "Metode Penelitian Hukum: Mengupas dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *NUSANTARA : Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2467, http://dx.doi.org/10.31604/jips.v8i8.2021.2463-2478.

[17] Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (April 1, 2020): 26, https://doi.org/10.14710/gk.2020.7504.

including primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials comprised statutes and regulations, represented by Law Number 5 of 1986 in conjunction with Law Number 51 of 2009 concerning the State Administrative Court and Law Number 30 of 2014 concerning Government Administration.[18] Secondary legal materials encompass many forms of written sources, such as books, journals, and results of legal research that pertain to the specific issue under investigation—acquiring tertiary legal information, such as legal dictionaries, articles from electronic mass media, and other relevant reading sources. The data derived from the written outputs is categorized based on the specific issue and afterward subjected to qualitative analysis, which assesses the accuracy as well as dependability of the data.[19]

## Discussion

### Overview of Forced Money

The legal definition of forced money under Indonesian legislation is stipulated in Article 606a of the *Wetboek op de Burgerlijke Rechtvordering* (*Reglemen* of Civil Procedure; "Rv"), Article 606b Rv, and the elucidation of Article 81 paragraph 2 letter an of Law No. 30 of 2014 concerning Government Administration, namely:

1. Article 606 a. Rv: "As long as a judge's decision contains a penalty for doing something other than paying a certain amount of money, it can be determined that as long as or every time the convicted person does not comply with the sentence, he must be handed over a certain amount of money in the amount specified in the judge's decision, and this money is called money forced."
2. Article 606 b. Rv: "If the decision is not fulfilled, then the opposing party of the condemned person has the authority to carry out the decision regarding the amount of forced money that has been determined without first obtaining a new basis of rights according to the law."
3. Explanation of Article 81, paragraph 2, letter a, Law No. 30 of 2014: "What is meant by 'forced money' is an amount of money that is deposited as collateral for decisions and actions to be implemented so

[18] Nor Fadillah, Hariyanto Hariyanto, and Abdallah Mourtadhoi, "Legal Problems in Determining Factual Actions as Dispute Object of the State Administrative Court in Indonesia," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 12, no. 1 (August 6, 2023): 7, https://doi.org/10.14421/sh.v12i1.2949.

[19] Orchida Nadia Salsabila, Nilman Ghofur, and M. Misbahul Mujib, "Religious Rights and State Presence in John Locke's Liberalism Perspective (Reflections on the 1984 Tanjung Priok Case)," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 12, no. 1 (August 26, 2023): 94, https://doi.org/10.14421/sh.v12i1.2957.

that when the decision and action have been implemented, the forced money is returned to the relevant government official."

The concept of forced money is understood through the perspectives and interpretations of experts and legal practitioners, specifically:

1. The concept of forced money, as proposed by Mr. F.M.J. Jansen, can be seen as a form of indirect execution aimed at attaining a real achievement that can't be achieved using regular execution methods, except revindication-based confiscation.[24]
2. As per Professor P. A. Stein, forced money refers to a certain sum established by a judicial decision. This monetary obligation may be imposed in its whole at once or in installments over a defined period. Additionally, non-compliance with the imposed sentence may result in additional penalties against the offender.[25]
3. According to Mr. H. Oudelaar, forced money refers to a specific sum established by the judge, which is imposed onto the offender due to the court's decision in cases where the individual fails to meet the first penalty.[26]
4. According to Marcel Stome, a professor at Rijksuniversiteit Gent in Antwerp, Belgium, imposing forced money on debtors might be a supplementary punishment. In cases where the debtor fails to comply with the primary penalty, the additional penalty is designed to pressure the debtor to meet the original sentence.[27]
5. According to Prof. Subekti, S.H., and Tjitrosoedibio, a court decision stipulates that if a convict fails to comply with the decision, they must pay the predetermined amount of forced money. Therefore, forced money can be regarded as an indirect method of enforcement.[28]
6. According to Hugenholtz Heemskerk, forced money is a sum set by a judge's decision that the convict must pay to benefit the opposing party if he does not carry out the principal penalty.[29]
7. According to J.C.T. Simorangkir, Drs. Rudy T. Erwin, S.H., and J.T. Prasetya forced money refers to the penalty that must be paid since the terms of the agreement were disobeyed.[30]

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[24] Lilik Mulyadi, *Tuntutan Uang Paksa (Dwangsom) Dalam Teori Dan Praktik* (Jakarta: Djambatan, 2001), 380.

[25] Mulyadi, 310.

[26] Mulyadi, *Tuntutan Uang Paksa (Dwangsom) Dalam Teori Dan Praktik*.

[27] Harifin Tumpa, *Memahami Eksistensi Uang Paksa (Dwangsom) Dan Implementasinya Di Indonesia*, Edisi 1 cetakan ke 2 (Jakarta: Prenada Media Group, 2010), 15.

[28] Subekti and R. Tjitrosoedibio, *Kamus Hukum*, Cet. 5 (Jakarta: Pradnya Paramita, 1980), 38.

[29] Mulyadi, *Tuntutan Uang Paksa (Dwangsom) Dalam Teori Dan Praktik*, 306.

[30] J.C.T Simorangkir, Rudy T Erwin, and J.T. Prasetyo, *Kamus Hukum*, Cet. 1 (Jakarta: Aksara Baru, 1983), 840.

8. Due to its placement in Book II Rv, titled "On the Implementation of Authentic Deed Decisions," where the legislator sees forced money as a tool to push the court's decision to be executed, Dr. Harifin Tumpa, S.H., M.H., believes that forced money (*dwangsom*) is an undeniable method of execution—applied by how Article 611a Rv was written.[31]

According to the numerous definitions provided by legal experts above, forced money (*dwangsom*) is money the convict must pay if the convict disobeys the judge's decision.

**Regulation of Forced Money (*Dwangsom*) in the Indonesian State Administrative Court System**

Under Indonesian rules, the notion of forced money lacks explicit regulation. Historically, the phrase forced money (*dwangsom*) was initially used in Article 606a and Article 606b Rv.

Looking at the two previous Dutch colonial era regulations, it can be concluded that regarding forced money (*dwangsom*), it was regulated that the judge could give a decision on forced money to the defendant if it were proven that he had committed a violation, but the type of violation was not stated. However, in the regulation of Law Number 5 of 1986, the term or definition of forced money has not yet been regulated. Within 18 years, Law 9 of 2004 and the second amendment, Law Number 51 of 2009, mentioned the term forced money. Still, it has not been said that its definition is rigid, as are its implemented regulations, giving unclear legal certainty.

A reasonably clear definition is contained in Law no. 30 of 2014 concerning Government Administration, specifically in the Elucidation section of Article 81, paragraph 2 letter a, which states that: "What is meant by 'forced money' is an amount of money that is deposited as collateral for decisions and actions to be implemented so that when the decision and action have been implemented, the forced money is returned to the relevant government official."

Imposing forced money pressures government agencies and officials to comply with state administration court decisions. This practice is a direct outcome of successfully granting the plaintiff's case and can be classified into three distinct types,[32] namely:

1. *A Declaratory Decision* refers to a judicial decision that affirms the legal validity of a specific condition following the law. This may involve determining the rightful ownership of the plaintiff, particularly

[31] Tumpa, *Memahami Eksistensi Uang Paksa (Dwangsom) Dan Implementasinya Di Indonesia*, 19.

[32] Erick Sambuari Lie, Muhamad H Soepeno, and Adi T Koesumo, "Implikasi Hukum Pihak Yang Tidak Melaksanakan Putusan Pengadilan Dalam Perkara Perdata," *Lex Privatum* 11, no. 3 (March 2, 2023).

about movable assets such as land and buildings.

2. *A Constitutive Decision* refers to a judicial decision that gives rise to a novel circumstance, such as the termination of an agreement or the declaration of bankruptcy for a firm.
3. *A Condemnation Decision* is a judicial decision that imposes penalties or obligations on the party that has lost a case, specifically within state administration decisions. These obligations may include revoking state administration decisions deemed null or invalid, issuing new decisions on behalf of state administration agencies, providing compensation, undertaking rehabilitation measures in employment disputes, and revoking and replacing existing decisions.

Upon examining the definition, it becomes apparent that the defining feature of a forced money decision in Indonesia is its dependence on a prior primary decision. Consequently, the existence of a forced money decision depends on a preceding principal decision. A forced money decision is not primarily intended as a punitive measure. Still, it emphasizes compliance with a specific course of action—the designation of the decision's character as the assessor is derived from the judge's decision.

Concerning the attributes of past assessments related to forced money, Lilik Muliyadi argues that the essence of forced money can be divided into two distinct components, namely:[33]

1. Assessor: The presence of this decision is contingent upon a prior decision, so it cannot exist independently.
2. *Pressie Middle* refers to a psychological strategy employed to ensure compliance with a prior judgment by the defendant. In this context, the imposition of forced money is an indirect means to facilitate the execution of the decision.

In enforcing forced money decisions in Indonesia, as previously stated, the decisions possess a weak nature in terms of enforceability. This is primarily due to the absence of implementing regulations over the past 13 years, resulting in state administrative bodies or officials failing to make the said decisions. The announcement of the court is disseminated through various mass media channels. In addition, it is the responsibility of the Court's Chairman to present the Court's decision to the President to instruct officials to execute the Court's decision and the House of Representatives to fulfill its oversight role. Moreover, the regulations associated with enforcing decisions made by the Administrative Court are outlined in Article 116 of Law Number 5 of 1986, in conjunction with Law Number 9 of 2004 and Law Number 51 of 2009. These regulations empower the court to

[33] Lilik Mulyadi, *Putusan Hakim Dalam Hukum Acara Pidana : Teori, Praktik, Teknik Penyusunan, Dan Permasalahannya* (Bandung: Citra Aditya Bakti, 2007), 86.

request the involvement of the superior of the relevant State Administration official, or even the President himself, to compel the defendant to comply with the court's decision.[34]

As per the author's analysis, the process by which the Court's Chairman submits submissions to the President will indirectly diminish the President's authority and establish an unfavorable precedent for the President's public image. This is particularly significant considering the President's dual role as the head of state and head of government. It is argued that if state administrative officials neglect their obligations in implementing State Administrative Court decisions, the mechanism will only worsen these concerns.[35]

The regulation in question creates problems with the existence of the State Administration Court because the nature of the coercive power mentioned in Law Number 51 of 2009 is only limited to reports. After all, the execution of the State Administration Court only emphasizes voluntary legal awareness without any coercive nature by the state administrative court, so it does not have punitive power or a deterrent effect on related executive officials.[36]

The execution of decisions by the Administrative Court in Indonesia tends to be biased. However, it is essential to note that the State Administration Court possesses the jurisdiction to make decisions that have permanent legal force (*in kracht van gewijsde*) and are binding on all parties (*erga omnes*),[37] such as the power of statutory regulations. Nevertheless, it is widely believed that the power of execution is considerably weak, as individuals burdened with obligations (condemnatory) must comply with the decision voluntarily or by coercion.[38] The current structure gives rise to legal ambiguity, as seen by implementing the judgment that mandates the prisoner to fulfill their duties. If forced money penalties remain discretionary, it will

[34] Nurfajrin Ramadhan and Nila Sastrawati, "Urgensi Pembentukan Lembaga Eksekutor dalam Eksekusi Putusan Pengadilan Tata Usaha Negara," *Alauddin Law Development Journal* 4, no. 1 (March 31, 2022): 258, https://doi.org/10.24252/aldev.v4i1.17147.

[35] Rozali Abdullah, *Hukum Acara Peradilan Tata Usaha Negara*, Cetakan ke-13 (Jakarta: Rajawali Press, 2016), 45.

[36] Lubna, "Upaya Paksa Pelaksanaan Putusan Pengadilan Tata Usaha Negara dalam Memberikan Perlindungan Hukum kepada Masyarakat," *Jurnal IUS Kajian Hukum Dan Keadilan* 3, no. 1 (April 20, 2015): 168, https://doi.org/10.12345/ius.v3i7.205.

[37] Dani Habibi, "Perbandingan Hukum Peradilan Tata Usaha Negara dan Verwaltungsgerecht sebagai Perlindungan Hukum Rakyat," *Kanun Jurnal Ilmu Hukum* 21, no. 1 (May 27, 2019): 7, https://doi.org/10.24815/kanun.v21i1.12185.

[38] Mohammad Afifudin Soleh, "Eksekusi Terhadap Putusan Pengadilan Tata Usaha Negara yang Berkekuatan Hukum Tetap," *Mimbar Keadilan*, September 7, 2018, 25, https://doi.org/10.30996/mk.v0i0.1604.

provide challenges to carry out the execution.

This voluntary problem is historically related to the legal culture of officials not obeying the law and implementing court decisions. Suppose it is connected to Lawrence M. Friedman's theory of legal effectiveness. In that case, law enforcement consists of three elements: the structure of the law, the substance of the law, and the legal culture. Friedman defines the structure of law as a skeletal framework, the substance of law as substantive rules, and the legal culture as social attitudes and values.[39]

The issue of insufficient official awareness is intricately tied to the legal culture prevalent among officials, which manifests in their seeming noncompliance with the law, as evidenced by their hesitance in executing court rulings. Based on the observed implementation, it is evident that a significant duration can characterize the execution procedure at the State Administration Court. Suppose a decision lacks the endorsement of the State Administrative Court and the acknowledgment of the State Administrative Body or Official. In that case, it deviates from the norm of an orderly manner, fast, cheap, and simple (*vide*. Article 4 Paragraph (2) Law Number 14 of 1970 concerning the Basic Principles of Judicial Power).[40]

As previously mentioned, the Indonesian state administrative courts have not yet clearly regulated the subject of forced money decisions because there are no implementing regulations. This legal vacuum creates inconsistencies in the rule of law, which should place the law as a solver of societal problems. Forced money in the Indonesian justice system only acts as psychological pressure, so its implementation is not optimal.

The primary purpose of making legal rules through legislation is to effectively accomplish legal objectives by establishing regulations for the state and its institutions to adhere to the fundamental principles of the law.[41] The forced money in France will increase daily unless the authorities fulfill the duties outlined in the judge's decision.[42]

The court decision stating the amount of forced money is the judge's prerogative because judges must play a role in making legal discoveries (*rechtsvinding*). After all, Indonesia adheres to judges being bound by the law

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[39] Huta Disyon, Elisatris Gultom, and Ema Rahmawati, "The Establishment of State-Owned-Holding-Company: A State's Controlling Rights Perspective Based on Radbruch's Theory," *Law Review* 23, no. 1 (July 2023): 72, http://dx.doi.org/10.19166/lr.v23i1.6995.

[40] Soeleman Baranyanan, "Efektifitas Eksekusi Peradilan Tata Usaha Negara Berdasarkan Undang- Undang Nomor 51 Tahun 2009," *SASI* 23, no. 1 (June 30, 2017): 7, https://doi.org/10.47268/sasi.v23i1.153.

[41] Nuraika Ishak, "Politik Hukum Pengaturan Amandemen Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 5, no. 2 (November 30, 2016): 116, https://doi.org/10.14421/sh.v5i2.2011.

[42] Irfan Fachruddin, *Konsekuensi Pengawasan Peradilan Adminitrasi Terhadap Tindakan Pemerintah* (Bandung: Alumni, 2004), 207.

but does not negate the judge's freedom to create rules (*vide.* Article 5 paragraph (1) Law Number 48 of 2009 concerning Judicial Power).[43] The decision on the amount of forced money certainly cannot be determined based on the judge's considerations alone; the judge should coordinate with the Minister of Finance, the Supreme Court, and the Minister of Law and Human Rights to determine the amount of forced money in terms of losses and impacts for the plaintiff.[44]

The judge's assessment of the imposed forced money was primarily centered on the plaintiff, neglecting to consider the defendant. This omission is incongruent with the principle of legal equality, which asserts that all individuals are to be treated impartially under the law. The French Conseil d'État oversees determining the forced money (*astreintes*) imposed on plaintiffs and defendants. In this process, considerations of fairness and the economic circumstances of the parties subject to such penalties are considered.

This arrangement presents an alternative viewpoint regarding assessing forced money penalties in the State Administrative Court and Conseil d'État. In this perspective, justice centers on the plaintiff and the extent of harm suffered, while economic factors center on the defendant. It is important to note that the financial considerations extend beyond punitive measures and encompass a broader scope. The Indonesian Administrative Court has yet to establish regulations about the specific amount and methodology for assessing forced monetary penalties, distinguishing it from the abovementioned context.

The determination of the imposition of forced money in the Administrative Court is a matter of great significance as it pertains to the allocation of burdens. However, it is worth noting that there is currently a lack of regulations governing the implementation of forced money, which poses challenges for the court in reaching decisions that establish liability for individual or service errors. Consequently, this prevents the court's ability to determine the appropriate imposition of forced money based on either state or personal finances.

In its development, there are two opinions on who to impose forced money payments on 1) state finances and 2) the personal finances of the defendant or official who was in office when the judicial decision was

[43] Togi Pangaribuan, "Permasalahan Penerapan Klausula Pembatasan Pertanggungjawaban Dalam Perjanjian Terkait Hak Menuntut Ganti Kerugian Akibat Wanprestasi," *Jurnal Hukum & Pembangunan* 49, no. 2 (July 5, 2019): 451, https://doi.org/10.21143/jhp.vol49.no2.2012.

[44] Putri Kemala Sari, "Penerapan Upaya Paksa Dalam Eksekusi Putusan Pengadilan Tata Usaha Negara Kepada Pejabat Tata Usaha Negara," *Ius Civile: Refleksi Penegakan Hukum dan Keadilan* 1, no. 1 (2017): 34.

implemented.[45] The rationale behind the burden placed on state finances is the inseparability of officials' obligations and their authority in executing governmental functions, attributing the consequences of their acts to the state's duty. Conversely, the prevailing viewpoint concerning the burden on personal finances is that public officials must carry out their responsibilities by established laws and regulations, thereby subjecting their duties, functions, and authority to strict regulation. Consequently, any error is attributed to the individual's lack of diligence in their work.

According to the author, if the official's mistake can be attributed to negligence in executing tasks according to relevant rules and regulations, it may be categorized as a personal error since the individual failed to fulfill their responsibilities as a state representative. This aligns with the theoretical framework proposed by the French Conseil d'État Error Theory, distinguishing between official fault (*faute de service*) and personal fault (*faute personelle*). The employee or state official can be prosecuted in the General Court when a personal mistake occurs. On the other hand, parties who suffer losses due to official errors must sue in administrative court.[46]

The defendant must bear the burden of forced money because this results from the negligence of the defendant's officials, who did not implement the court decision properly. This opinion is in line with the characteristics of forced money, which are continuous until the defendant complies with the decision and a mechanism for charging forced money to the official's salary or allowances until his term of office is completed.[47]

## Regulation of Forced Money (*Astreinte*) in the French Conseil d'État

The legal basis for the French Conseil d'État to impose an astreinte is derived from the principles established in the Code of Administrative Justice, specifically from Article L 911-3 to L 911-8, as outlined below:[48]

- Art. L 911-3: *"The court may, in the same decision, accompany the injunction prescribed under Articles L. 911-1 and L. 911-2 with* ***an astreinte*** *that it imposes in accordance with the provisions of this book, and determine the date*

[45] Bambang Heriyanto, "Tinjauan Yuridis Implementasi Uang Paksa (Dwangsom) di Peradilan Tata Usaha Negara," *Jurnal Hukum Peratun* 4, no. 2 (August 31, 2021): 151, https://doi.org/10.25216/peratun.422021.141-156.

[46] Enrico Simanjuntak, "Restatement Tentang Yuridiksi Peradilan Mengadili Perbuatan Melawan Hukum Pemerintah," *Jurnal Hukum Peratun* 2, no. 2 (December 3, 2019): 165–90, https://doi.org/10.25216/peratun.222019.165-190.

[47] Muhammad Adiguna Bimasakti, *Perbuatan Melawan Hukum (PMH) Oleh Pemerintah/Onrechtmatige Overheidsdaad (OOD) dari Sudut Pandang Undang-Undang Administrasi Pemerintah* (Yogyakarta: Deepublish Publisher, 2018), 82.

[48] The articles below are translated from french into english by the authors. Source: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006449415

*from which it takes effect."*

- Art. L 911-4: *"In the event of non-compliance with a judgment or a ruling, the concerned party may request the court, once the decision has been rendered, to ensure its enforcement.*
  *If the judgment or ruling for which enforcement is requested does not define the measures for enforcement, the court seized of the matter shall proceed with defining those measures. It may set a deadline for compliance and impose an* ***astreinte."***

- Art. L911-5: *"In the event of non-compliance with one of its decisions or a decision rendered by an administrative authority other than an administrative court or an administrative appeal court, the Conseil d'État may, even on its own initiative, when such decision does not define the measures for enforcement, proceed to define such measures, set a deadline for compliance, and impose* ***an astreinte*** *against the legal entities involved.*
  *When* ***an astreinte*** *has already been imposed under Article L. 911-3, no new* ***astreinte*** *shall be imposed.*
  *The powers granted to the Conseil d'État under this article may be exercised by the President of the Litigation Section."*

- Art. L911-6: *"The* ***astreinte*** *can be either provisional or definitive. Unless the court specifies its definitive nature, it should be considered provisional. The penalty payment is separate from any damages awarded (domages et intérêts)."*
-
- Art. L. 911-7: *" In case of total or partial non-execution or delayed execution, the court proceeds with the calculation of the* ***astreinte*** *it had imposed.*
  *Unless it is established that the non-execution of the decision resulted from an unforeseen event or force majeure, the court cannot modify the rate of the final* ***astreinte*** *during its calculation.*
  *The court may moderate or remove the temporary* ***astreinte****, even in the case of established non-execution."*

In case no. 428409 [2020], the French Conseil d'État prosecuted the Prime Minister, Minister of the Environment, and Minister of Health as representatives of the French Government for failing to comply with French law regarding European air quality standards. In a recent development, the Conseil d'État has mandated the French State to pay two fines of €10 million each for the periods spanning from July 2021 to January 2022 and January to July 2022.[49] These fines, totaling the equivalent of IDR 329 billion, have been

[49] the Conseil d'État, "Air Pollution: The Conseil d'État Orders the French State to Pay Two Fines of €10 Million," DÉCISION DE JUSTICE, October 17, 2022,

imposed due to the Government's violations of the Conseil d'État's ruling in July 2020. The command had ordered the Government to take necessary measures to enhance air quality in various regions of France, particularly in Paris, Lyon, Marseille-Aix, Toulouse, and Grenoble.[50] Based on the judge's decision, it can be inferred that the Conseil d'État issued a direct order for the individuals implicated (namely, the Prime Minister, Minister of the Environment, and Minister of Health) to make forced money (*astreinte*).

The French Conseil d'État judge's decision on the enforcement of *artreinte*, a form of forced money penalty, stipulates that the execution of such a decision must be entrusted to a public or private legal organization to guarantee its effective implementation. Moreover, suppose the convicted individual fails to comply with the forced money obligations. In that case, the judge in charge can petition the State Council, acting on behalf of the President's litigation authority, to enforce those forced money payments. This regulation highlights the disparity in the implementation mechanisms of forced money judgments between France and Indonesia. It also acknowledges the growing recognition of public and private legal entities as authorized executors responsible for enforcing forced money decisions (*artreinte*).

The preceding discussion mentioned that the Conseil d'État introduced the notion of error theory, drawing from the legal interpretations of the Conseil d'État judges. This theory states that errors can be categorized as either administrative fault (*faute de service*) or personal fault (*faute personelle*), with the judge's decisions being influenced by their deliberations. Moreover, the Conseil d'État, a prominent judicial body in France, has the authority to warn the guilty official. Moreover, if the relevant officials or bodies do not implement the decision of the Conseil d'État, there could be the potential for blocking or rejecting the budget plan.

## Conclusion

There are several differences between applying forced money in the State Administrative Court system in Indonesia and France; for example, forced money in the State Administrative Court in Indonesia is additional (assessor), whereas it is the main decision in France. This aspect, supported by the legal culture factor of government officials in Indonesia who tend to ignore the law, coupled with weak regulatory aspects regarding the

https://www.conseil-etat.fr/Pages-internationales/english/news/air-pollution-the-conseil-d-etat-orders-the-french-state-to-pay-two-fines-of-10-million.

[50] the Conseil d'État, "Air Pollution: Conseil d'État Orders Government to Pay 10 Million Euros," DÉCISION DE JUSTICE, August 5, 2021, https://www.conseil-etat.fr/Pages-internationales/english/news/air-pollution-conseil-d-etat-orders-government-to-pay-10-million-euros.

application of forced money in Indonesia, has an impact on the tendency for state officials not to comply with the decisions of the State Administrative Court, thus giving the impression of an Administrative Court decision. The state is no longer binding and does not represent the law's supremacy principle. From the perspective of the Error Theory, the absence of technical regulations on forced money in determining personal or service errors of government officials creates legal uncertainty in determining the legal subject as well as ambiguity regarding the imposition of forced money decisions on state finances or the personal finances of the officials concerned. For this reason, the author suggests that the government and the Supreme Court need to immediately form implementing regulations for the State Administrative Court Law, especially regulations related to the amount, execution mechanism in forced money decisions, and determination of legal subjects so that there is no legal vacuum that causes legal uncertainty.

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