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Editorial Office: Faculty of Law, Sriwijaya University
Jalan Srijaya Negara, Palembang, South Sumatra 30139, Indonesia.
Phone: +62711-580063Fax: +62711-581179
E-mail: sriwijayalawreview@unsri.ac.id| sriwijayalawreview@gmail.com
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Legal Consequences of Disobedience of Provisional Decision of the Administrative Court

Sri Winarsi[a]

[a] *Faculty of Law, Universitas Airlangga, Indonesia. Corresponding Author Sri Winarsi, e-mail: sri.winarsi@fh.unair.ac.id*

Article

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Abstract

The existence of a legal vacuum in the State Administrative Court (PTUN) procedural law relating to the execution of the PTUN Provisional Decision raises the issue of Judicial Disobedience by state administrative institutions that do not want to carry out the PTUN Provisional Decision. Departing from this, there are two main problem formulations, namely: (1) What are the characteristics of PTUN provisional decisions? and (2) What is the formulation of legal protection against non-compliance with PTUN provisional decisions? Furthermore, this legal research uses a statutory approach, a conceptual approach, and a case approach. Based on an examination of existing legal issues, it can be concluded that provisional decisions are known in PTUN procedural law practice, where provisional decisions are submitted for matters deemed essential (urgent circumstances) by the Plaintiff to the Panel of Judges to be decided in an Interim Decision. Suppose the Party ordered by the PTUN does not implement the PTUN provisional decision. In that case, 2 (two) legal preventive mechanisms and 3 (three) legal repressive remedies can be taken in stages: 1) Sending a letter to the relevant agency, 2) Reporting to the Ombudsman, and 3) Using Criminal Law Mechanisms.

INTRODUCTION

There is a classic legal adage that goes back a long way: "*qui jussu judicis aliquod fecerit non videtur dolo malo fecisse, quia parere necesse est*." (free translation: "A person who does something by order of a judge is not considered to have committed a fraudulent act. Therefore it is necessary to obey.").[1] As for one of the depths of meaning, the legal adage is that when there is a judge's order through a valid decision, the legal subject who is ordered is obliged to

[1] Herbert Broom, *A Selection of Legal Maxims* (Frankfurt: Salzwasser-Verlag, 2022).

comply with the judge's order.[2] Regarding the obligation to obey this judge's decision, some even said that a judgment or decree that the Supreme Court has said must be obeyed by the parties to a case even if it should turn out on appeal that the court had no jurisdiction, no authority to act at all, yet it had the authority to decide, and to decide erroneously whether it had authority, and its order is to be obeyed."[3]

The obligation for the community to submit to court decisions is certainly logical, especially for a *democratic* state of law (*democratische rechtsstaat*)[4], such as Indonesia (*vide* Article 1 paragraph (2) jo. paragraph (3) of the 1945 Constitution of the Republic of Indonesia) which places law as a mechanism to maintain order or known as law and order.[5] In Indonesia, court decisions are the ultimate mechanism agreed upon by the founding parents to uphold law and justice, as outlined in Article 24 of the 1945 Constitution.[6] Of course, when the founding parents agreed that court decisions are the final mechanism to uphold law and justice, as outlined in the 1945 Constitution of the Republic of Indonesia, which is the *staats grund gesetz* (basic rules) for Indonesia[7], then, it is logical when the Indonesian people are obliged to submit to the mechanism agreed upon by the founding parents.

One of the decisions that must be obeyed, not only by the Indonesian people but also by the government, is the State Administrative Court (PTUN) decision.[8] As is generally known, F.J. Stahl states that administrative justice (*administrative rechtspraak*) is one of the characteristics of a state of law, so it is logical when Indonesia, which is a democratic state of law, also makes the State Administrative Court.[9] This can be seen in Article 24, paragraph (2) of the 1945 Constitution jo. Article 18 of Law Number 48 of 2009 concerning Judicial Power, the Administrative Court is one of the judicial bodies under the Supreme Court of the Republic of Indonesia. Thus, compulsory compliance with the PTUN's decision is logical because the design of the PTUN is to act as a judicial body to assess the actions of the executive body and provide legal protection to members of the public.[10]

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2 Alfon Alfon et al., "'Problematics Law of Civil Reputation Damages Against Corruption Criminal Acts That Has Been Decided to Free.,'" *International Journal of Multicultural and Multireligious Understanding* 7, no. 8 (2020): 371, https://doi.org/https://doi.org/10.18415/IJMMU.V7I8.1933.

3 Hermin Sriwulan, "Reformulation of a Fair Iddah Alimony Maintenance Arrangements in Indonesia's Muslim Family Law,"" *Journal of Law, Policy and Globalization* 104, no. 1 (2020): 80–86.

4 B. M. Oomen, "'Het Feest van de Democratische Rechtsstaat: Wie Komt?,'" Tijdschrift Voor Constitutioneel Recht (TvCR) 2020, 2020.

5 Georg Wenzelburger, "'The Partisan Politics of Law and Order,'" *The Partisan Politics of Law and Order*, 2020, https://doi.org/https://doi.org/10.1093/OSO/9780190920487.001.0001.

6 Tri Purnama and Sulaiman, "'Penetapan Status Tersangka Oleh Hakim Melalui Proses Persidangan Dalam Perspektif Pembaruan Hukum Acara Pidana,'" *Jurnal Hukum, Sosial Dan Humaniora* 1, no. 2 (2023): 132–47, https://doi.org/https://doi.org/10.21787/jbp.13.2021.319-329.

7 Rahmat Irwan Novrizal and Mirza Nasution, "'Pancasila Sebagai Staatsfundamentalnorm Indonesia Dalam Pembentukan Hukum Nasional (Perspektif Undang-Undang Cipta Kerja Nomor 11 Tahun 2020 Tentang Cipta Kerja),'" *Jurnal Ilmiah METADATA* 3 (2021).

8 Paulus Efendi Lotulung, *Lintasan Sejarah Dan Gerak Dinamika Peradilan Tata Usaha Negara (Peratun)* (Jakarta: Salemba Humanika, n.d.).

9 A. Patra M. Zen, *Perlindungan Pihak Ketiga Yang Beritikad Baik* (Jakarta: Yayasan Pustaka Obor Indonesia, 2021).

10 Amancik Amancik, Beni Kurnia Illahi, and Putra Perdana Ahmad Saifulloh, "'Perluasan Kompetensi Absolut Peradilan Tata Usaha Negara Dalam Keadaan Darurat Bencana Non Alam Di Indonesia,'" *Nagari Law Review* 4, no. 2 (2021): 154–74, https://doi.org/https://doi.org/10.25077/NALREV.V.4.I.2.P.154-174.2021.

Despite the importance of PTUN, it turns out that in Indonesia, PTUN has a fundamental problem related to the absence of a mechanism with substantive coercive power.[11] Law No. 5 of 1986 on State Administrative Courts, as amended by Law No. 9 of 2004 on the Amendment to Law No. 5 of 1986 on State Administrative Courts and Law No. 51 of 2009 on the Second Amendment to Law No. 5 of 1986 on State Administrative Courts (UU PTUN) does have various legal mechanisms, when the Party ordered/punished to carry out the decision does not want to carry out the decision. However, no legal remedies can be forced when the ordered/punished Party still does not want to carry it out. In comparison, in a civil court, when the defendant does not want to execute the legally enforceable verdict, the Plaintiff can apply for the execution of the verdict (execution) to the court, which will later carry it out by force, also known as fixed execution.[12] In the criminal court, there is a prosecutor who will execute the judge's decision, as Article 270 of Law Number 8 of 1985 concerning the Criminal Procedure Code (KUHAP) which provides in full: "the execution of court decisions that have obtained permanent legal force is carried out by the prosecutor, for which the clerk sends a copy of the verdict to him".[13] This is what makes the decision tend to be disobeyed (judicial disobedience), and some call this kind of decision the least dangerous power, with no purse nor sword.[14]

One example of a case related to non-compliance with a PTUN decision is the Medan State Administrative Court Decision Number: 17/G/2000/PTUN-MDN, where in the case, the Plaintiff felt aggrieved by the Letter of the Head of the Medan City Development Planning Agency Number 640/856 dated March 14, 2000, regarding the rejection of recommendation on the Application for Building Situation Certificate for buildings located at Jalan Timor and Jalan Timor Baru I, Gang Buntu Urban Village, East Medan Subdistrict on behalf of Razali Ali and Letter of the Head of the Medan City Planning Office Number 644/872 dated March 24, 2000, regarding the refusal to obtain a Building Situation Certificate for buildings located at Jalan Timor and Jalan Timor Baru I, Gang Buntu Subdistrict, which essentially prevented the Plaintiff from constructing buildings on the land in question. After the Decision of the Medan State Administrative Court No. 17/G/2000/PTUN-MDN, which basically granted the Plaintiff's case in its entirety, the administrative officials, namely the Head of the Medan City Development Planning Agency and the Head of the Medan City Planning Agency, were still unwilling to issue a recommendation on the Building Situation Certificate Application, thus preventing the Plaintiff from constructing the building.

In Indonesia, there is an institution called the Ombudsman, according to Article 1 number 1 of Law Number 37 of 2008 concerning the Ombudsman, which has the authority to oversee the implementation of public services. Based on this authority, when there is a provisional PTUN decision that a state administrative agency does not carry out, the Ombudsman can

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[11] Edi Rohaedi et Al, "'Kedudukan Uang Paksa (Dwangsom) Dalam Eksekusi Putusan Pengadilan Tata Usaha Negara,'" *PALAR (Pakuan Law Review)* 9, no. 2 (2023): 121–29, https://doi.org/https://doi.org/10.33751/PALAR.V9I2.8581.

[12] Sri Hartini, Setiati Widihastuti, and Iffah Nurhayati, "'Eksekusi Putusan Hakim Dalam Sengketa Perdata Di Pengadilan Negeri Sleman,'" *Jurnal Civics: Media Kajian Kewarganegaraan* 14, no. 2 (2017): 128–38, https://doi.org/https://doi.org/10.21831/CIVICS.V14I2.16852.

[13] Roceberry Ceristanthy Damanik and T. Erwinsyahbana, "'Kewenangan Jaksa Dalam Penerapan Sanksi Pidana Mati Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika,'" *JURNAL DOKTRIN REVIEW* 1, no. 1 (2022): 163–74, https://jurnal.umsu.ac.id/index.php/DOKTRIN/article/view/12883.

[14] Elvi Hidayanti and Nurul Listiyani, "'Juridical Analysis Of The Existence Of Land Bank On The Law About Work Creation,'" *International Journal of Educational Research and Social Sciences (IJERSC)* 4, no. 1 (2023): 49–56, https://doi.org/https://doi.org/10.51601/IJERSC.V4I1.591.

become an institution that provides reprimands and sanctions so that the state agency carries out the PTUN's provisional decision. However, it must be understood that the Ombudsman institution in Indonesia needs to have the authority to provide strict sanctions and a deterrent effect. For example, the Ombudsman is not authorised to impose sanctions on state institutions that do not want to make the PTUN's provisional decision.

One of the snowball effects of a mechanism with substantive force against PTUN decisions is the absence of a mechanism with substantive force against provisional decisions at PTUN. In general, a provisionary decision is a decision that answers provisionary demands, namely the request of the Party concerned to temporarily take preliminary action in the interests of one of the parties before a final decision is rendered.[15] This provisional decision is usually found in civil disputes but does not rule out the possibility of being made in State Administrative (TUN) disputes. However, the legal problem is that there is a legal vacuum (*leemten in het recht*) in the PTUN procedural law when the defendant does not want to implement the provisional decision. For example, when the Government still needs to implement the PTUN decision ordered by the panel of judges. If this is allowed, then there is the potential for provisional decisions at the PTUN to be ignored by the government and will even be considered a "tiger without fangs" that does not have to be ignored.[16] Abroad, ignoring a decision has certain juridical consequences. For example, in *Howat v. Kansas* and *United States v. United Mine Workers*, the judges even elaborated:

> "however erroneous the court's action may be, even if the error is in the assumption of the validity of a seemingly void law going to the case's merits. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review . . . its orders . . . are to be respected, and disobedience of them is contempt of its lawful authority, to be punished."[17]

From this description, it can be understood that when disobeying a decision can be considered an act of *contempt of court*. This act of contempt of court, even in India, is specifically regulated in The Contempt of Courts Act, 1971 which in Article 12 allows for criminal sanctions in the form of imprisonment for a maximum of six months and a maximum fine of two thousand rupees.[18]

To ensure the *novelty of* this article, several similar articles will be described, and the differences between the other articles. Yustus Pundayar's article entitled: "Disobedience of State Administrative Officers in Implementing State Administrative Court Decisions (Study of Decisions of the Jayapura State Administrative Court)" was published in the International Journal of Multicultural and Multireligious Understanding Volume 10, Number 6, in 2023. The article focuses on the disobedience of the Jayapura State Administrative Court's decision and its juridical consequences. In contrast, this article focuses on the disobedience of PTUN's Provisional Decision and its legal consequences in *ius constitutum* and *ius constituendum*.[19]

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[15] Endang Conik Pebruani, "'Analisis Terhadap Tingginya Angka Putusan Verstek Dalam Perkara Perceraian Pada Tahun 2017 (Studi Pengadilan Agama Pekanbaru Kelas I A),'" *Journal of Hupo_Linea* 2, no. 1 (2017): 1–9, https://ejournal.anotero.org/index.php/hupo/article/view/43.

[16] Opik Rozikin, "'Contempt Of Court In Indonesian Regulation,'" *Jurnal CIC Lembaga Riset Dan Konsultan Sosial* 1, no. 1 (2019): 1–14, https://doi.org/https://doi.org/10.51486/JBO.V1I1.1.

[17] John Harrison, "'Remand without Vacatur and the Ab Initio Invalidity of Unlawful Regulations in Administrative Law,'" *Brigham Young University Law Review* 48, no. 7 (2022): 2081–89.

[18] Vanshika Dhingra, "'Analyzing the Use of Contempt of Court,'" *Indian Journal of Law and Legal Research* 5, no. 1 (2023), https://heinonline.org/HOL/Page?handle=hein.journals/injlolw10&id=860&div=&collection=.

[19] Yustus Pondayar, "'Disobedience of State Administrative Officers in Implementing State Administrative Court Decisions (Study of Decisions of the Jayapura State Administrative Court),'" *International Journal of Multicultural and Multireligious Understanding* 10, no. 6 (2023): 450–54, https://doi.org/https://doi.org/10.18415/IJMMU.V10I6.4925.

Ridwan Muhammad's article entitled: "The Problems of Non-Executive Court Decisions at the State Administrative Court: Case Study of the Ambon State Administrative Court Decision Number: 10/G/2015/PTUN. ABN By the Mayor of Tidore Islands." which was published in the International Journal of Education, Information Technology, and Others Volume 3, Number 3, in 2020. The article discusses obstacles to execute the Ambon State Administrative Court Decision Case Number: 10/G/2015/PTUN. ABN by the Mayor of the Tidore Islands, while this article is related to the disobedience of the PTUN's Provisional Decision and its legal consequences in *ius constitutum* and *ius constituendum*.[20]

Based on the above background, this article will further analyze the legal consequences of disobedience to the PTUN's provisionary decision. First, this article's problem formulations are the characteristics of the PTUN provisional decision. Second, what is the formulation of legal protection against non-compliance with the PTUN's provisional decision?

RESEARCH METHODS

This research is doctrinal research. Legal research: "...a process to find legal rules, principles, and doctrines to answer the legal issues at hand."[21] The legal issues analyzed in this article are related to the characteristics of PTUN provisional decisions and legal protection against non-observance of these decisions.

The approaches used in this article are the statute, conceptual, case, philosophical, comparative, and futuristic approaches. The statutory approach is used to analyze the legal issues studied based on a study of various normative regulations that have a relationship.[22] The laws and regulations used are laws and regulations related to the characteristics of PTUN provisional decisions and legal protection against non-observance of these decisions, such as the 1945 Constitution of the Republic of Indonesia, the PTUN Law, and so on.

A conceptual approach is based on theories, expert opinions, and doctrines in legal science to find conceptual, legal ideas and principles that answer research issues.[23] The concepts used are those related to PTUN provisional decisions and legal protection against non-observance of these decisions, such as the concept of contempt of court, preventive and repressive legal protection, executorial power of decisions, and so on. The case approach is an approach that uses judicial decisions with permanent legal force as a source of legal material.[24] When analyzing court decisions with permanent legal force, what is analyzed is the ratio decidendi section (the legal reasons used by the judge in determining his decision). This is so that it can be understood as the basis used by the judge in giving the decision.

To make this article more perfect, especially in formulating Legal Protection Against Non-observance of PTUN Provisionary Decision, 3 (three) other approaches are also used: a

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[20] Ridwan Muhammad, "'The Problems of Non-Executive Court Decisions at the State Administrative Court,'" *International Journal of Education, Information Technology, and Others* 3, no. 3 (2020): 666–76, https://doi.org/https://doi.org/10.5281/ZENODO.4584206.

[21] Faizal Kurniawan et Al, "'Legal Framework Of Sustainable Construction Procurement To Prevent Land Degradation: Comparison Between Indonesia, Singapore and Thailand,'" *Journal of Property, Planning and Environmental Law*, 2023, 1–13, https://doi.org/https://doi.org/10.1108/JPPEL-05-2023-0021.

[22] Fresiella ' Arsy et Al, "Tindak Pidana Pencurian Ringan Dan Upaya Hukumnya Dalam Proses Tuntutan Pemidanaan,"," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (2023): 1297–1308, https://doi.org/https://doi.org/10.37680/ALMANHAJ.V5I2.3211.

[23] Irwansyah, *Penelitian Hukum: Pilihan Metode&Praktik Penulisan Artikel* (Yogyakarta: Mitra Buana Media, 2020).

[24] Muhammad Syahrum, *Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi Dan Tesis* (Riau: Dotplus Publisher, 2020).

philosophical approach, a comparative approach, and a futuristic one. These three approaches can be the basis for formulating formulations by exploring philosophy, looking at other countries' arrangements, and formulating rules according to future needs (*ius constituendum*).

The source of legal material used in this research is secondary data, namely data obtained through library materials by collecting from various reading sources related to the problem under study, namely the characteristics of PTUN provisional decisions and legal protection against non-observance of these decisions. This article's Secondary data consists of primary, secondary, and tertiary legal materials. The collection of primary and secondary legal materials is done by literature study. Legal materials obtained by the literature study are then collected using the snowball method and then analyzed to answer the legal issues in this article, namely the characteristics of the PTUN provisional decision and legal protection against non-observance of the decision.[25]

ANALYSIS AND DISCUSSION

Characteristics of PTUN Provisionary Decisions

Provisional decisions, also known as *provisionele beschikking,* are *interim awards* (temporary disposal*)* that contain temporary measures to wait until the final decision on the subject matter of the case is rendered.[26] In other words, the imposition of a provisional decision is not justified when it comes to the subject matter of the case because it is only limited to temporary measures in the form of prohibitions.[27] For example, a prohibition to continue construction on the litigated land with the threat of paying forced money. In practice, provisional claims are generally filed together with the main lawsuit with a systematic formulation that follows the description of the arguments of the main lawsuit. Because the provisional claim is formulated in a series with the main lawsuit, without the main lawsuit, the provisional claim cannot be filed because the claim is an assessor with the main lawsuit. The content of the provisional claim is a demand that before the main case is examined, and the judge first imposes a temporary decision as a preliminary measure aimed at ensuring the interests of the Plaintiff or the interests of both parties.[28] Looking at the normative level, the existence of a provisional decision is regulated in Article 180 HIR *j.o* Article 191 RBG. Based on these two provisions, it can be seen that the direct effect attached to the provisional decision is immediate (*uitvoerbaar bij voorad)* where the provisional decision can be implemented immediately, even though the main case has not been examined and decided. Looking deeper, the reference to the provision of provisional decisions in the practice of procedural law (courts) in Indonesia is Supreme Court Circular Letter Number 3 of 2000 concerning Immediate (*uitvoerbaar bij voorad)* and Provisional Decisions ("Sema 3/2000). Specifically, in point 4 of Sema 3/2000, it has been determined that provisional claims that can be subject to a provisional verdict are: a) A lawsuit based on the evidence of an authentic letter or a handwritten letter (handschrift) which is undisputed as to its contents and signature, which according to the law does not have

[25] Agus Yudha Hernoko, *Dasar Pengajuan Upaya Peninjauan Kembali Terhadap Peninjauan Kembali Dalam Perkara Perdata* (Sidoarjo: Ziffatama Publishing, 2016).

[26] Al Chamdani, "'Penerapan Putusan Sela Di Pengadilan Hubungan Industrial Dalam Perkara Pemutusan Hubungan Kerja Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020,'" *Legal Standing : Jurnal Ilmu Hukum* 6, no. 2 (2022): 241–56.

[27] Chamdani.

[28] Devi Marlita Martana, "'Tuntutan Provisi Dalam Gugatan Pelanggaran Merek Pada Pengadilan Niaga,'" *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 2, no. 1 (2013), https://doi.org/https://doi.org/10.24843/JMHU.2013.V02.I01.P03.

evidentiary power; b) A lawsuit concerning Debts and Credits whose amount is certain and undisputed; c) A lawsuit concerning the lease of land, houses, warehouses and others, where the lease relationship has expired, or the Tenant is proven to have neglected his obligations as a good faith Tenant; d) The subject matter of the lawsuit regarding the claim for the division of marital property (gono-gini) after the decision regarding the divorce lawsuit has permanent legal force; e) The granting of Provisional lawsuits, with consideration for a firm and clear law and fulfilling Article 332 Rv, f) Lawsuits based on Decisions that have obtained permanent legal force (*in kracht van gewijsde*) and have a relationship with the subject matter of the lawsuit filed; g) the subject matter of the dispute regarding *bezitsrecht*.

In the practice of PTUN procedural law, provisional claims are often filed by formulating them in the Plaintiff's Request and Petitum section with the phrase "In Provision and or Postponement" before the Subject Matter section, as in the Makassar State Administrative Court Decision Number 76/G/2018/PTUN in the State Administrative Dispute case between Dr. Akhmad Syarifuddin and the Palopo City General Election Commission. To understand the characteristics of provisional decisions in the State Administrative Court, the examples of such decisions are described in the following table:

Table 1: Provision Decisions in the Administrative Court

Decision Number	Request For Provision	Provision Verdict
76/G/2018/ PTUN	Stating that the implementation of the Decree of the General Election Commission of Palopo City Number: 146/PL.03.7-KPT/7373/KPU-Kot/VIII/2018 concerning the Determination of Elected Candidate Pairs for Mayor and Deputy Mayor of Palopo in 2018 is postponed until there is a Court Decision that is legally binding in this case.	Rejecting the Plaintiffs' Request regarding the Postponement of the Implementation of the Decree of the General Election Commission of Palopo City Number: Determination of Elected Candidates for Mayor and Vice Mayor of Palopo 2018 dated August 12, 2018.
217/G/2014/PTUN-JKT	1. Grant the request for postponement of the implementation of the Object of Dispute requested by the Plaintiff; 2. Order the Defendant to suspend the implementation of the Object of Dispute No. M.HH-07.AH.11.01.TAHUN 2014, dated October 28, 2014 Regarding the Ratification of Changes in the Management Structure of the Central Leadership Council of the United Development Party. 3. Ordering the Defendant not to take any action related to the Dispute Object No. M.HH-07.AH.11.01.TAHUN 2014, dated October 28, 2014 Regarding the Ratification of Changes in the Management Structure of the Central Leadership Council of the United Development Party until a decision has permanent legal force (*inkracht van gewijsde*).	Maintain the DECISION of Delay of Implementation of the Decision of the Object of Dispute Number: 217/G/2014/PTUN-JKT, dated November 6, 2014, until there is a Court Decision that obtains permanent legal force unless there is a Court Decision that cancels or another determination that revokes the decision.
95/G/2015/ PTUN-BDG	The Plaintiff filed a request for a stay of execution of the Right to Use Certificate No.2/Desa Plered, issued on February 15, 1992, Situation Drawing dated May 21, 1991, Number: 618/1991, covering an area of 29,765 m2, in the name of: General Railway Company Cq. Bandung Operation Area II, to the extent administratively controlled and owned by the Plaintiff;	1. Grant the Plaintiff's request to postpone the implementation of the Right to Use Certificate No.2/Desa Plered, issued on February 15, 1992, Situation Drawing dated May 21, 1991, Number: 618/1991, covering an area of 29,765 m2, in the name of: General Railway Company Cq. Bandung Operation Area II, as long as the area administratively controlled and owned by the Plaintiff

		2. Oblige the Defendant to suspend the implementation of the Right to Use certificate No. 2/Village Plered, issued on February 15, 1992, Situation Drawing dated May 21, 1991, Number 618/1991, covering an area of 29,765 m2 in the name of: General Railway Company Cq. Bandung Operation Area II, as long as the area administratively controlled and owned by the Plaintiff until there is a Court Decision that has permanent legal force.
19/G/2017/ PTUN.PDG	Stating to postpone the implementation of the Decree of the Budget User Authority of the West Sumatra Provincial Road Infrastructure Office *Satker* Number: 300/KPTS/SATKER-DPJ/X/2017 Regarding Sanctions for Inclusion in the Blacklist dated October 11, until there is a Court Decision that has permanent legal force.	Declare valid and binding the Stipulation of the Padang State Administrative Court which contains a postponement of the implementation of the Decree of the Budget User Authority of the West Sumatra Provincial Road Infrastructure Office *Satker* Number: 300/KPTS/SATKER-DPJ/X/2017 Regarding Sanctions for Inclusion in the Blacklist dated October 11, until there is a Court Decision that has permanent legal force.
3/G/2020/ PTUN.SBY	1. Granting the Plaintiff's request to postpone the implementation of the State administrative decision in the form of *Kraton* Village Head Decree Number: 141/13/35.09.20.2003/2019 dated December 05, 2019, concerning the Dismissal of Village Apparatus along with the attachment to the *Kraton* Village Head Decree Number 141/13/35.09.20.2003/2019 dated December 05, 2019, on behalf of HAMID. 2. Obliging the Defendant to postpone the implementation of the disputed object decision, namely the State Administrative Decision in the form of the Decree of the Head of *Kraton* Village Number: 141/13/35.09.20.2003/2019 dated December 05, 2019, concerning the Dismissal of Village Apparatus along with the attachment to the decision of the Head of *Kraton* Village Number 141/13/35.09.20.2003/2019 dated December 05, 2019, on behalf of HAMID, until the decision in this case is obtained.	Confirm the Stipulation issued by the Panel of Judges dated February 19, 2020 to postpone the implementation of the disputed object decision, namely the State Administrative Decision in the form of a Decree of the Head of *Kraton* Village Number: 141/13/35.09.20.2003/2019 dated December 05, 2019, concerning the Dismissal of Village Apparatus along with the attachment to the decision of the Head of *Kraton* Village Number 141/13/35.09.20.2003/ 2019 dated December 05, 2019, on behalf of HAMID, until the decision in this case has obtained permanent legal force.

Source: *Author analysis of the court's decision.*

Table 1 shows several cases the granting of provisional judgment. It can be understood that provisional rulings are matters considered essential by the Plaintiff (hence the request) and the Panel of Judges (hence the granting), and the ruling is made through an Interim Decision.

Formulation of Legal Protection Against Non-observance of PTUN Provisionary Decision

Generally, a decision is valid when it is read out in public or when the decision is received (when the Party is not present). When the Party punished in a decision does not want to or does not comply with the decision voluntarily to carry out a decision, a decision execution mechanism is used. However, some assumptions say that the validity of a decision is from the

time of execution, even though this is not true. This assumption arises a lot because it is very rare for the punished Party to carry out the contents of the decision voluntarily.[29]

One example of a case related to non-compliance with a PTUN decision is the Medan State Administrative Court Decision Number: 17/G/2000/PTUN-MDN, where in the case, the Plaintiff felt aggrieved by the Letter of the Head of the Medan City Development Planning Agency Number 640/856 dated March 14, 2000, regarding the rejection of recommendation on the Application for Building Situation Certificate for buildings located at Jalan Timor and Jalan Timor Baru I, Gang Buntu Urban Village, East Medan Subdistrict on behalf of Razali Ali and Letter of the Head of the Medan City Planning Office Number 644/872 dated March 24, 2000, regarding the refusal to obtain a Building Situation Certificate for buildings located at Jalan Timor and Jalan Timor Baru I, Gang Buntu Subdistrict, which essentially prevented the Plaintiff from constructing buildings on the land in question. After the Decision of the Medan State Administrative Court No. 17/G/2000/PTUN-MDN, which basically granted the Plaintiff's case in its entirety, the administrative officials, namely the Head of the Medan City Development Planning Agency and the Head of the Medan City Planning Agency, were still unwilling to issue a recommendation on the Building Situation Certificate Application, thus preventing the Plaintiff from constructing the building.

The reason that the Head of the Medan City Development Planning Agency and the Head of the Medan City Planning Agency are unwilling to implement the contents of the decision that has permanent legal force above is solely because the granting of a Building Permit on the fire alley has not been regulated in the Local Regulation of Medan City and according to the Defendants violates the regulations on Spatial Planning. Based on this, Medan City Development Planning Agency and the Head of the Medan City Planning Agency still are not willing to implement Medan State Administrative Court Decision Number: 17/G/2000/PTUN-MDN. This then made the Plaintiffs' victory in vain

In relation to the Provisional Decision of the State Administrative Court, in fact, without the need for execution, it can be said to have taken effect.[30] This is based on the argument that a decision's validity is generally when it is read out in public or when the decision has been received (when the Party is not present), not when execution is carried out. Thus, there is no need to execute the PTUN Provisional Decision when the Party being punished voluntarily makes the decision. However, an execution mechanism is still important to ensure that the punished Party makes the decision when it does not want to do it voluntarily.[31] In the PTUN Law, as well as Law 30 of 2014 concerning Government Administration, as amended by Article 175 of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation as enacted by Law Number 6 of 2023 concerning the Stipulation of Government

[29] Dian S. Puspita, Osgar S. Matompo, and Moh. Yusuf Hasmin, "'Peranan Jurusita Pengganti Dalam Pelaksanaan Tugas Pokok Dan Fungsi Peradilan Tata Usaha Negara (Studi Pada Pengadilan Tata Usaha Negara Palu),'" *Jurnal Kolaboratif Sains* 2, no. 1 (2019), https://doi.org/https://doi.org/10.56338/JKS.V2I1.702.

[30] Kukuh Tejomurti, Arsyad Aldyan, and Rachma Indriyani, "The Establishing Paradigm of Dominus Litis Principle in Indonesian Administrative Justice Article Abstract,"," *Sriwijaya Law Review*, 2021, https://doi.org/https://doi.org/10.28946/slrev.Vol5.Iss1.

[31] Wati Trisnawati, "Analisis Yuridis Terhadap Putusan Pengadilan Yang Tidak Dapat Dilakukan Eksekusi (Non Executable)," *Jurnal Syntax Admiration* 1, no. 7 (2020): 983–84.

Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Government Administration Law), there is no specific regulation related to the execution mechanism for PTUN provisional decisions, so it must be seen in the general provisions related to the execution of decisions in PTUN procedural law and the provisions for the execution of provisional decisions in general. In general, provisions related to executing decisions in PTUN procedural law usually refer to Article 116 jo. Article 117 of the PTUN Law:

Article 116 of the Administrative Court Law:

1) Copies of court decisions that have obtained permanent legal force shall be sent to the parties by registered mail by the local court clerk upon the order of the court chairman who tried the case in the first instance no later than 14 (fourteen) working days.
2) If after 60 (sixty) working days after the court decision that has obtained permanent legal force as referred to in paragraph (1) is received, the defendant does not carry out its obligations as referred to in Article 97 paragraph (9) letter a, the disputed state administrative decision shall no longer have legal force.
3) If the defendant is determined to have to carry out the obligations as referred to in Article 97 paragraph (9) letter b and letter c, and then after 90 (ninety) working days, it turns out that these obligations have not been carried out. The Plaintiff submits a request to the court's chairman as referred to in paragraph (1), so that the court orders the defendant to carry out the court decision.
4) Suppose the defendant is unwilling to implement a court decision that has obtained permanent legal force. In that case, the relevant official shall be subject to coercive measures in the form of payment of forced money and/or administrative sanctions.
5) Officials who do not implement the court decision, as referred to in paragraph (4), shall be announced in the local print mass media by the clerk since the fulfilment of the provisions as referred to in paragraph (3).
6) In addition to being published in the local print media, as referred to in paragraph (5), the chief justice shall submit the matter to the President as the holder of supreme government power to order the official to implement the court decision and to the people's representative institution to carry out the supervisory function.
7) Provisions regarding the amount of forced money, types of administrative sanctions, and procedures for implementing forced money payments and/or administrative sanctions are regulated by laws and regulations."

Article 117 of the Administrative Court Law:

1) Insofar as the obligation referred to in Article 97 paragraph (11) is concerned, if the defendant is unable or incapable of fully implementing a Court decision that has obtained permanent legal force due to a change in circumstances that occurred after the Court decision was rendered and/or obtained permanent legal force, he is obliged to notify the President of the Court as referred to in Article 116 paragraph (1) and the Plaintiff.
2) Within thirty days after receiving the notification referred to in paragraph (1), the Plaintiff may file a request with the President of the Court that has delivered the Court decision that has obtained permanent legal force that the defendant be obliged to pay a sum of money or other compensation that he wants.
3) After receiving the request as referred to in paragraph (2), the President of the Court shall order the summoning of the two parties to try to reach an agreement on the amount of money or other compensation to be charged to the Respondent.
4) If, after attempting to reach an agreement, no agreement can be reached on the amount of money or other compensation, the President of the Court shall, by a decision accompanied by sufficient consideration, determine the amount of money or other compensation in question.
5) The determination of the President of the Court, as referred to in paragraph (4), may be submitted either by the Plaintiff or by the defendant to the Supreme Court for re-establishment.
6) As referred to in paragraph (5), the Supreme Court's decision must be obeyed by both parties.

Based on these provisions, it can be seen that several efforts can be made when the Party being punished does not want to carry out the decision: First, the Plaintiff submits a request to the chairman of the court for the court to order the defendant to execute the court decision. Second, suppose the defendant is unwilling to execute a court decision that has obtained permanent legal force. In that case, the relevant official is subject to coercive measures in the form of payment of forced money and/or administrative sanctions. Third, the court clerk shall

announce in the local print media that the payment of forced money and/or administrative sanctions has not been made. The head of the court shall submit this matter to the President as the highest government power holder to order the official to implement the court decision and to the people's representative institution to carry out the supervisory function. Based on the description above, it can be understood that several legal remedies can be taken when the Party convicted to carry out the decision does not want to carry out the decision. However, there are legal problems, namely, from Article 116 jo. Article 117 of the PTUN Law, it appears that the phrase "obtaining permanent legal force", while the provisional decision is not a permanent legal force decision. Thus, the legal mechanism in Article 116 jo. jo. Article 117 of the PTUN Law cannot be used for provisional decisions. This is also affirmed by Article 115 of the PTUN Law, which stipulates: "Only Court decisions that have obtained permanent legal force can be implemented." This provision even has the potential to lead to *a contra rio* interpretation, that because the PTUN's provisional decision is not a decision with permanent legal force, it is not mandatory or cannot even be implemented. Concerning the mechanism of execution of provisional decisions in general, it is regulated in Supreme Court Circular Letter No. 3/2000 on Immediate Decision (*Uitvoerbaar Bij Vooraad*) (SEMA 3/2000) and Provisional, Supreme Court Circular Letter No. 4/2001 on Issues of Immediate Decision (*Uitvoerbaar Bij Voorraad*) and Provisional (SEMA 4/2001), and RAKERNAS/2012/PERDATA/1-10. The following will describe the execution of provisional decisions in these regulations:

SEMA 3/2000 numbers 5-7:

> "5) After a Serta Merta Decision is rendered by a District Court Judge or Religious Court Judge, no later than 30 (thirty) days after it is pronounced, a valid copy of the decision is sent to the High Court and Religious High Court. 6) If the Plaintiff submits a request to the President of the District Court and the President of the Religious Court that the Immediate Decision and Provisional Decision be implemented, then the request along with the complete case file is sent to the High Court and the Religious High Court along with the opinion of the President of the District Court and the President of the Religious Court concerned. 7) The provision of collateral whose value is equal to the value of the goods/objects of execution so as not to cause losses to other parties if it turns out that, in the future, a decision is made that overturns the decision of the Court of First Instance."

SEMA 4/2001:

> "Every time you want to execute a decision immediately (*Uitvoerbaar bij Voorraad*), it must be accompanied by a stipulation as stipulated in point 7 of SEMA No. 3 of 2000 which states: "The provision of collateral equal to the value of the goods/objects of execution so as not to cause harm to other parties if it turns out that in the future a decision is made that annuls the decision of the Court of First Instance" Without such collateral, there can be no immediate execution of the decision. Furthermore, if the Tribunal is going to grant the request immediately, it must notify the President of the Court."

RAKERNAS/2012/PERDATA/1-10 number 6-8:

> "6) SEMA No.3 Year 2000 stipulates that after a verdict is immediately handed down by the District Court, no later than 30 days after the verdict is pronounced, a valid copy of the verdict is sent to the High Court. If the Plaintiff submits a request that the decision be implemented immediately, then the request, along with the case file, is sent to the Court of Appeal with the opinion of the Chairman of the District Court concerned. Upon receipt of such a request, the President of the Court of Appeal must scrutinize it carefully and seriously consider its social impact before approving the immediate execution of the judgment. Suppose the case has reached the cassation level while the immediate decision has not yet been executed, according to the previous SEMA. In that case, it is determined that the implementation of the immediate decision must obtain prior approval from the Chief Justice of the Supreme Court, but since the issuance of SEMA No. 5 of 1969 to provide such approval is delegated to the Chief Justice of the High Court. Meanwhile, SEMA No. 3 of 2000 does not specify the case up to which level, but only regulates the execute immediate decisions and Provisional decisions. The Chief of the District Court requests approval from the President of the High Court, so by referring to the previous SEMA, even though the case has been at the cassation level, the one authorized to give approval is the President of the High

> Court. 7) If the request for immediate execution of the verdict is approved by the Chief Justice of the High Court, the Chief Justice of the District Court shall make a stipulation regarding the provision of security. SEMA No.3 Year 2000 does not specify the form of the provision of collateral, but if referring to SEMA No.6 Year 1975, it is determined. That collateral objects should be easily stored and easily used to replace the implementation if the decision concerned is not justified later by the appeal judge or in cassation. Do not accept personal guarantees (*borg*) to avoid including third parties in the process. Determining the objects and the amount is up to the President of the District Court. Collateral objects are recorded in a separate register, such as a register of confiscated objects in civil cases. Regarding the provision of collateral, it is further emphasized in SEMA Number 4 of 2001 that without collateral, there can be no immediate execution of the decision. So, concerning SEMA No. 6 of 1975, to facilitate the execution of the decision if the District Court's decision is later overturned at the Appeal Level or Cassation Level, the guarantee should be in the form of money or goods (for example, in the form of gold) whose value is the same or equivalent to the object of execution. 8) If the decision has been executed and the object of execution has been handed over to the execution Petitioner, then the District Court's decision at the appeal and cassation level is cancelled, and the Plaintiff's claim is rejected entirely; it must be restored to its original state. If the object of execution is still intact, it must be handed back to the Respondent of execution directly. However, suppose the execution object has been transferred to a third party, for example, sold or granted. In that case, the restoration in its original state is carried out by filing a lawsuit. In the recovery of the execution of goods that a third party has controlled, then if the third Party obtained it or bought it in good faith, for example, through an execution auction, the third Party must be protected, and the defendant or the execution respondent can file a lawsuit with a claim for compensation to the Plaintiff (Applicant for immediate decision execution)."

From SEMA 3/2000 and SEMA 4/2001, it can be seen that the subjects regulated are district courts and religious courts. For RAKERNAS/2012/PERDATA/1-10, it can be seen that this is an agreement of judges in the civil chamber, so this regulation is only related to civil matters. Thus, it can be understood that the general regulation on *provisional* decisions *expressis verbis* does not apply to the Administrative Court. Thus, there needs to be a regulation or legal vacuum regarding the mechanism for executing the provisional decision of the PTUN from these regulations.

As the legal adage goes: "*in novo casu novum remedium apponendum est*" (free translation: "in new cases, new legal remedies must be applied.")[32], then, of course, there must be a legal solution to every new legal problem that exists. In this case, even though there is no regulation or legal vacuum regarding the mechanism for executing the provisional verdict of the PTUN, there must still be a concrete legal solution available to the community as a form of legal protection for the community (*rechtsbescherming*), especially in this case repressive legal protection.[33]

Theoretically, there are 2 (two) kinds of legal protection: 1) preventive legal protection and 2) repressive legal protection.[34] Preventive legal protection is a preventive legal mechanism in the form of preventing disturbances, or preventive legal protection is an action or effort as a preventive measure to prevent violations of applicable norms. In contrast, repressive legal protection is a mechanism to restore disturbed balance. The legal preventive solutions that can

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[32] Sitko, Olena Mykolaivna, and Nadiia Mykolaivna Shapovalenk, "Grammar Practicum on the Latin Language for Students of Specialty Law," 2019.

[33] Khalid Dahlan and Anna Erliyana Chandra, "Kedudukan Peradilan Administrasi Negara Sebagai Upaya Dalam Mendorong Terbentuknya Pemerintahan Yang Baik," *Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 6, no. 1 (2021): 10–25, https://doi.org/https://doi.org/10.22373/JUSTISIA.V6I1.10609.

[34] Xavier Nugraha, Krisna Murti, and Saraswati Putri, "'Third Parties'' Legal Protection Over Agreed Authorized Capital Amount by Founders in Limited Liability Com-Panies'," *Lentera Hukum* 6, no. 2 (2019): 173–88, https://doi.org/https://doi.org/10.19184/%20ejlh.v6i1.9676.

be carried out, as a form of repressive legal protection related to the absence of regulation or legal vacuum related to the mechanism for executing the provisional decision of the PTUN decision are firstly the establishment of internal standards of procedure (SOP) in government institutions in implementing existing state administrative court decisions so that all relevant administrative officials comply and secondly to provide training to state administration officials regarding the implementation of a state administrative court decision and regarding the form of implementation of the decision.

The legal repressive solutions that can be carried out as a form of repressive legal protection related to the absence of regulation or legal vacuum related to the mechanism for executing the provisional decision of the PTUN decision are at least three and can be done in stages. First, the Plaintiff can send a letter to the relevant agency. If there has been a provisional ruling, then as the nature of the provisional ruling is immediate[35], the Plaintiff requesting the provisional ruling can send a letter to the agency subject to the provisional ruling to implement the relevant provisional ruling voluntarily and in good faith, as a manifestation of the principles of good governance and citizen-friendly.[36] As a preventive measure to ensure that the agency to which the letter is sent does not ignore the letter, a copy can be given to the relevant supervisor and internal supervisory officials.

Second, reporting to the Ombudsman. As Article 1 point 1 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (Law 37/2008) stipulates: "The Ombudsman of the Republic of Indonesia, hereinafter referred to as the Ombudsman, is a state institution that has the authority to oversee the implementation of public services both organized by state and government administrators including those organized by State-Owned Enterprises, Regional-Owned Enterprises, and State-Owned Legal Entities as well as private entities or individuals assigned the task of organizing certain public services, some or all of which are sourced from the state revenue and expenditure budget and/or regional revenue and expenditure budget." Thus, the Ombudsman is an independent state institution (*state auxiliary organ*) that has the authority to oversee the implementation of good public services.[37] The report to the Ombudsman, as per Article 24 of Law 37/2008, must fulfil the following conditions: a) full name, place and date of birth, marital status, occupation, and complete address of the Reporter; b) contains a detailed description of the event, action or decision being reported; and c) has submitted a report directly to the reported Party or his superior, but the report did not get resolved properly.

It must be understood that although the Ombudsman is an independent state institution that has the authority to oversee the implementation of public services, it is not followed by the authority to impose sanctions on related institutions when violations are found (*vide* Article 8

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[35] Enny Dwi Cahyani, Ahmad Bahir, and Ariya Dewaka, "'Implikasi Jabatan Kosong Wakil Ketua Pengadilan Negeri,'" *Soedirman Law Review* 5, no. 3 (2023), http://journal.fh.unsoed.ac.id/index.php/SLR/article/view/14202.

[36] Taufik Hidayat, Yos Johan Utama, and Lapon Tukan Leonard, "'Pelaksanaan Rehabilitasi Bidang Kepegawaian Dalam Putusan Peradilan Tata Usaha Negara (Studi Kasus: Putusan Nomor: 042/G/2015/PTUN.SMG Juncto Nomor 100/B/2016/PT.TUN.SBY),'" *Diponegoro Law Journal* 11, no. 4 (2022), https://doi.org/https://doi.org/10.14710/DLJ.2022.36137.

[37] Faqih Akbar, Lukman Hakim, and Anwar Cengkeng, "'Pertanggungjawaban Administratif Lembaga Negara Independen Dalam Sistem Penyelenggaran Pemerintahan Di Indonesia,'" *Legal Spirit* 5, no. 2 (2022), https://doi.org/https://doi.org/10.31328/LS.V5I2.3625.

of Law 37/2008). The possible authority to be exercised by the Ombudsman is to provide recommendations regarding the settlement of the Report, such as Recommendations to pay compensation and/or rehabilitation to the aggrieved Party. Since it is only a recommendation, there is no obligation for the relevant institution to comply.

There are only a few institutions that have juridical consequences when they do not comply with the Ombudsman's recommendations, such as the Regional Head, as Article 36 of Government Regulation of the Republic of Indonesia Number 12 of 2017 concerning the Development and Supervision of Regional Government Administration (PP 12/2017) which stipulates:" 1) Regional heads, deputy regional heads, DPRD members, and regions that commit administrative violations in the implementation of Regional Government are subject to administrative sanctions; 2)... r. regional heads do not implement the recommendations of the Ombudsman as a follow-up to public complaints on:" However, there is still no obligation for other institutions in general to comply with the Ombudsman's recommendations.[38]

Third, using the criminal law mechanism. Concerning the use of this criminal remedy mechanism, it is classified into 2 (two): 1) In the Old Criminal Code and 2) When Law Number 1 of 2023 concerning the Criminal Code, which came into force on January 2, 2026 (*vide* Article 624 of the Criminal Code). For the record, as the nature of criminal law is the last legal remedy (*ultimum remedium*), it is appropriate that legal remedies are used after all other legal remedies have been unsuccessful because this legal remedy focuses on providing pain or a deterrent effect.

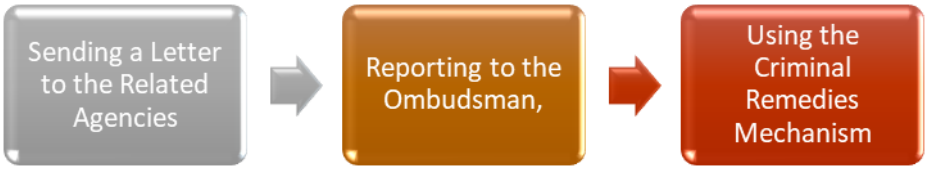
In the Old Criminal Code, several articles regulate contempt of court. As for one of the articles that can be used in the Old Criminal Code, when the Party is ordered to carry out the provisional decision but ignores it, Article 227 of the Old Criminal Code regulates: "Any person who exercises a right, knowing that by judicial verdict the right has been revoked, shall be punished by a maximum imprisonment of nine months or a maximum fine of nine hundred rupiahs." From the description of the essence of the offence (*bestanddeel delict*), it can be understood that this article is related to the punishment of a person who exercises a right, knowing that by a judge's decision, the right has been revoked and the provisional decision is usually related to the temporal revocation of rights. Some consider that the revocation of rights referred to in Article 227 of the Old Criminal Code must be associated with the revocation of rights, as in Article 35 of the Old Criminal Code. In contrast, in the *Wetboek van Strafrecht, the* word used in Article 227 of the Old Criminal Code is "*een recht uitoefent*", and there are no restrictions on certain types of rights. Meanwhile, the element of rights referred to in Article 35 of the Old Criminal Code is the rights of the convicted person that can be revoked by a Judge's Decision in a criminal case. The essence of revocation of rights regulated in Article 35 of the Old Criminal Code is specifically aimed at the rights of convicts. Therefore, the phrase used in Article 35 WvS is *de rechten waarvan de schuldig*. Related to the use of Article 227 of the Old Criminal Code against non-obedience of the verdict, because the rights have been revoked in general, it does not have to be limited to the rights revoked in Article 35 of the Old Criminal Code, parallel to the legal considerations of the judges in the Mamuju District Court Decision

[38] Adam Setiawan, "'Pelaksanaan Fungsi Rekomendasiombudsman Republik Indonesia Kepadakepala Daerah,'" *Veritas et Justitia* 6, no. 2 (2020): 274–97, https://doi.org/https://doi.org/10.25123/VEJ.V6I2.3657.

Number 32/Pid.B/2016/PN.Mam jo. Makassar High Court Decision Number 341/PID/2016/PT.MKS: "Considering that "right" can be interpreted as authority (authority according to law), power to do something (because law, rules have determined it and so on) or true power over something or to demand something (*vide* Big Indonesian Dictionary); "Thus, when the Party ordered by the court does not follow the provisional decision of the Administrative Court, it can be subject to Article 227 of the Old Criminal Code.

In the Criminal Code (effective since January 2, 2026), when not implementing the decision, it can be subject to criminal sanctions as Article 280 paragraph (1): "1) Shall be punished with a maximum fine of category II, any person who at the time of the court session: a. does not comply with a court order issued in the interest of the judicial process;" Thus, when the provisional decision of the Administrative Court is not executed by the Party ordered by the court since January 2, 2026, it can be subject to criminal sanctions, as in Article 280 paragraph (1) of the Criminal Code. Based on the description above, 3 (three) legal repressive remedies can be taken when the Party ordered by the court does not execute the provisional decision of the Administrative Court. The three efforts that exist in stages are also a trilogy. This trilogy is a comprehensive solution to resolve *judicial disobedience*, specifically related to non-compliance with existing PTUN provisions. It will be described in the flowchart below to make it easier to understand the trilogy of legal remedies related to the non-compliance of the PTUN's provisional decision.

Diagram 1 Trilogy of Repressive Legal Remedies Related to Non-Compliance with PTUN Provision Decision



Source: *Author's Analysis*

This trilogy of legal remedies related to the non-implementation of the PTUN's provisional decision should only be used temporarily in the *ius constitutum* construction. In the *ius constituendum construction*, there should be a special regulation (*lex specialis*) related to the non-implementation of the PTUN's provisional decision, just like the legal remedy for the execution of PTUN decisions that have permanent legal force in the Draft PTUN Law. In addition, contempt of court should also be specifically regulated concerning the non-execution of the PTUN's provisional decision in the Draft PTUN Law, as Thailand regulates contempt of court against non-execution of PTUN decisions in the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), section 57 paragraph 4 jo. section 64[39] and India, specifically in The Contempt of Courts Act, 1971, which in Article 12

[39] Ahsana Nadiyya, "'Urgensi Contempt Of Court Dalam Pelaksanaan Putusan Ptun: Studi Perbandingan Indonesia Dan Thailand,'" *Yustitia* 8, no. 1 (2022): 48–61, https://doi.org/https://doi.org/10.31943/YUSTITIA.V8I1.148.

allows criminal sanctions in the form of imprisonment for a maximum of six months and a maximum fine of two thousand rupees.[40]

In law enforcement, one of the essential things is legal certainty. There needs to be more effort to execute the PTUN provisional decision, which certainly has the potential to cause legal uncertainty. The absence of legal certainty in law enforcement can make people reluctant to use existing legal mechanisms and instead use mechanisms that are not in accordance with existing rules, even potentially taking the law into their own hands (*eigenrecthing*). Therefore, the formulation of the handling of PTUN provisional decisions needs to be done in order to create legal certainty.

CONCLUSION

Provisional decisions are known in the practice of PTUN procedural law, where provisional decisions are submitted to the Panel of Judges on matters considered essential (the existence of urgent circumstances) by the Plaintiff to be decided in the Interim Decision. Suppose the Party ordered by the PTUN needs to implement the PTUN's provisional decision. In that case, 2 (two) kinds of legal protection can be taken: legal preventive protection and legal repressive protection. There are 2 (two) legal preventive protection that can be taken: 1) the establishment of internal standards of procedure (SOP) in government institutions in implementing existing state administrative court decisions so that all relevant administrative officials comply and 2) to provide training to state administration officials regarding the implementation of a state administrative court decision and regarding the form of implementation of the decision. There are 3 (three) repressive legal remedies that can be carried out in stages: 1) Sending a Letter to the Related Agencies, 2) Reporting to the Ombudsman, and 3) Using the Criminal Remedies Mechanism. These three legal remedies are tiered, so it is also a trilogy of legal remedies related to non-compliance with the PTUN Provision Decision.

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[40] Dhingra, "'Analyzing the Use of Contempt of Court.,'" n.d.

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