

The Contrarius Actus Principle: Legal Challenges and Prospects for Reform in Executing Administrative Court Decisions

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Abstract

The failure to enforce state administrative court decisions with lasting legal force poses a challenge in Indonesia. Data indicates that merely 15 of 276 state administrative decisions were executed between 2013 and 2019. In 2020, statistics from the KPK, Bawas, and BPKP revealed that implementing state administrative court orders was insufficient, with an average completion rate of 34.92%. The 2021 annual report of the Ombudsman of the Republic of Indonesia documented 109 instances of non-compliance with unimplemented decisions. The research uses normative juridical methods with the addition of interviews to support existing data. This article examines the history, application, and challenges of *contrarius actus*, particularly in implementing state administrative court decisions. This research helps future researchers generate improvements or recommendations for state administrative court decision execution. The results show that *contrarius actus* originated from Roman law and is now an essential principle in state administrative law. Application of the *contrarius actus* in Indonesia's administrative justice law provides for execution mechanisms without an institution or other party specialized in execution; administrative officials themselves must execute court decisions. A significant challenge in applying this principle in Indonesia is the

failure of administrative officials to comply with court decisions. Despite the implementation of a merit-based system and elections aimed at selecting officials with integrity and lawfulness in filling administrative positions, many administrative officials violate court orders, making this enforcement of this concept difficult. To address this issue, it is recommended to maximize the role of the Ombudsman and state administrative courts in ensuring that administrative officials comply with legal decisions.

Keywords

Contrarius Actus Principle; Execution; Legal Compliance; State Administrative Court; Administrative Official.

Introduction

State administrative courts are essential in ensuring the realization of human rights within a nation's legal and political system. These specialized tribunals are tasked with monitoring the operations of the state administration and protecting individual rights from potential abuses or violations by government entities.¹ Administrative courts possess a distinct type of jurisdiction that set them apart from conventional courts. They focus on civil disputes involving the government, particularly concerning the legality or legitimacy of governmental actions or decisions. The establishment of state administrative court aims to counteract governmental absolutism. In Indonesia, the populace and the government are bound by the principle of harmony, collaborating to achieve the aspirations of statehood.²

The State Administrative Courts possess the exclusive authority to adjudicate state administrative disputes, specifically those arising between individuals or civil legal entities and state authorities or officials at both central and regional levels due to the issuance of state

¹ Julie Fraser, "Challenging State-Centricity and Legalism: Promoting the Role of Social Institutions in the Domestic Implementation of International Human Rights Law," *The International Journal of Human Rights* 23, no. 6 (July 3, 2019): 974–92, <https://doi.org/10.1080/13642987.2019.1577539>.

² Richo A Wibowo et al., "Wacana Pemerintah Untuk Mereposisi Kelembagaan Inspektorat: Tindak Lanjut, Tanggapan, Serta Inisiasi Kedepan," *Jurnal Hukum & Pembangunan* 48, no. 4 (December 31, 2018): 716, <https://doi.org/10.21143/jhp.vol48.no4.1800>.

administrative decisions.³ The final result of resolving administrative disputes is a decision that provides justice for all the parties involved. Therefore, the enforcement of court decisions is an important component of the judicial process, ensuring that justice is not only proclaimed but also upheld. However, administrative court rulings may not be executed due to obstacles obstructing their implementation.⁴ A research by FA Satria Putra elucidates the implementation of judicial rulings, state administrative courts continue to encounter numerous issues, as the execution of decisions is delegated to state administrative authorities.⁵ Even though various regulations and mechanisms have regulated this, there are still no forced efforts from a juridical perspective against agencies or officials concerned to comply with the contents of the Administrative Court decision.⁶ These problems encourage research that provides recommendations for improving the system of executing decisions in state administrative courts.

According to a study by Hendry Julian Noor et al., from 2013 to 2019, just 15 out of 276 state administrative judgments were executed, indicating that 261 decisions remained unimplemented.⁷ Additional information pertaining to the execution of state administration court decisions is available in the 2020 report on the evaluation of the case management system in first-level courts, conducted by the Corruption Eradication Commission (KPK) in conjunction with Supervisory

³ Aju Putrijanti, "Jurisprudence of State Administrative Courts in The Development of State Administrative Law," *Jurnal Penelitian Hukum De Jure* 21, no. 2 (June 24, 2021): 161, <https://doi.org/10.30641/dejure.2021.V21.161-174>.

⁴ Hasto Sasmito, "Implementation Of Decisions And Obstacles Administrative Court - Implementation Obstacles," *Jurnal Daulat Hukum* 1, no. 2 (June 15, 2018): 391, <https://doi.org/10.30659/jdh.v1i2.3279>.

⁵ F A Satria Putra, "Problem Eksekutorial Putusan Hakim Pengadilan Tata Usaha Negara," *Justisi* 7, no. 1 (January 3, 2021): 66–75, <https://doi.org/10.33506/js.v7i1.1201>.

⁶ Diego Fossati et al., "Ideological Representation in Clientelistic Democracies: The Indonesian Case," *Electoral Studies* 63 (February 2020): 102111, <https://doi.org/10.1016/j.electstud.2019.102111>.

⁷ Hendry Julian Noor, Kardiansyah Afkar, and Henning Glaser, "Application of Sanctions Against State Administrative Officials in Failure to Implement Administrative Court Decisions," *BESTUUR* 9, no. 1 (August 12, 2021): 72, <https://doi.org/10.20961/bestuur.v9i1.49686>.

Agency (Bawas) and Financial and Development Supervisory Agency (BPKP). The implementation of state administrative court decisions is inadequate. The average execution completion rate for administrative matters was only 34.92% of the total execution requests. This report indicates the insufficient awareness among state administration personnel in fulfilling their responsibilities.⁸ This assertion is additionally corroborated by statistics derived from the 2021 annual report of the ombudsman of the Republic of Indonesia. The report indicated a total of 109 instances regarding the non-implementation of judgments. The research revealed 12 specific cases in which decisions rendered by State Administrative Courts were not executed.

The failure of state administrative authorities to comply with the state administrative court decisions results in several consequences. This often indicates human rights violations within the legal and political structure of a country. Furthermore, the failure of state administrative bodies or officials to implement the decisions of state administrative courts can significantly undermine the authority of the courts, lead to judicial harassment and increase public distrust in the judiciary, potentially inciting the public to damage the courts themselves.⁹ Another consequence is the possibility of administrative officials in Indonesia being administratively sanctioned by their superiors if they fail to enforce decisions that have permanent legal force.¹⁰

The significant consequences of failing to enforce administrative decisions have motivated researchers to diligently seek viable answers to the issue. They recognize its impact on undermining the protection of individuals' rights against possible abuse or infringement by governmental entities. Research conducted in 2019 suggested that

⁸ Umar Dani, *Konsep Dasar Dan Prinsip-Prinsip Peradilan Tata Usaha Negara* (Depok: RajaGrafindo Persada, 2022).

⁹ 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 5, 2015), <https://doi.org/10.12345/ius.v3i1.205>.

¹⁰ Hendry Julian Noor, Kardiansyah Afkar, and Henning Glaser, "Application of Sanctions Against State Administrative Officials in Failure to Implement Administrative Court Decisions," *BESTUUR* 9, no. 1 (August 12, 2021): 72, <https://doi.org/10.20961/bestuur.v9i1.49686>.

imposing contempt of court convictions on state administrative officials who fail to comply with decisions could enhance the enforcement of state administrative court rulings while ensuring legal certainty and protection for citizens against the arbitrary actions of these officials.¹¹ Other researchers recommend establishing a new legal entity dedicated to executing the court functions.¹²

There are six previous studies relevant to this research, which the author categorizes into two different patterns. The first pattern relates to the principle of *contrarius actus*, which has been examined in three scientific articles. These three scientific articles pertain to the principle of *contrarius actus* in the dissolution of community organization. However, none has specifically addressed the principle in the implementation of administrative court decisions.¹³¹⁴¹⁵ The second pattern relates to the obstacles in enforcing state administrative court decisions. Three relevant scientific articles discuss these challenges, analyzing them from the

¹¹ Budi Suhariyanto, "Urgensi Kriminalisasi Contempt of Court Untuk Efektivitas Pelaksanaan Putusan Peradilan Tata Usaha Negara," *Jurnal Konstitusi* 16, no. 1 (April 1, 2019): 192, <https://doi.org/10.31078/jk16110>.

¹² Yulius, "Diskursus Lembaga Eksekusi Negara Dalam Penegakan Hukum Di Indonesia/The Discourse of State Execution Institution In Indonesian Law Enforcement," *Jurnal Hukum Peratun* 1, no. 1 (April 24, 2018): 11–32, <https://doi.org/10.25216/peratun.112018.11-32>.

¹³ M. Asfa Firoza, "Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Hak Kebebasan Berserikat Berdasarkan Konstitusi Negara Republik Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 2, no. 2 (December 10, 2019): 147–62, <https://doi.org/10.24090/volksgeist.v2i2.2884>.

¹⁴ Muhammad Yasin Izharulhaq, Adrian E Rompis, and Amelia Cahyadi, "The Role of The Contrarius Actus Principle in Oversight of The Growth And Development Of Community Organizations," *Yustisia Jurnal Hukum* 8, no. 3 (February 2, 2020): 432, <https://doi.org/10.20961/yustisia.v8i3.31702>.

¹⁵ Victor Imanuel Nalle, "Asas Contrarius Actus Pada Perpu Ormas: Kritik Dalam Perspektif Hukum Administrasi Negara Dan Hak Asasi Manusia," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 4, no. 2 (October 23, 2017): 244–62, <https://doi.org/10.22304/pjih.v4n2.a2>.

perspective of legal structure, substance, and legal culture.¹⁶¹⁷¹⁸ Thus, there has been no specific discussion on the position of the *contrarius actus* principle within the obstacles to implementation, the challenges it faces, or the prospects of enforcing decisions in accordance with this principle.

This research will focus on the principle of *contrarius actus*, which underpins the necessity for Administrative Court decisions to be executed through the compliance of state administrative officials. It will also examine the challenges arising from the non-compliance of administrative officials or bodies in enforcing decisions, as well as the roles of the Ombudsman and the State Administrative Court in enhancing the legal awareness of administrative officials. This research serves as a crucial foundation for future scholars in developing innovations or recommendations for the execution of state administrative decisions, ensuring that any proposed innovations or recommendations do not contravene the principle of *contrarius actus*.

Method

The employed research approach is normative juridical, aimed at evaluating a norm or provision through analyzing library materials or secondary data.¹⁹ To support this research, interviews were conducted with judges of the Yogyakarta Administrative Court and the Ombudsman of the Republic of Indonesia in Yogyakarta. This study examines laws and literature related to the *contrarius actus* principle in implementing state administrative judgments. It employs statutory, philosophical, and historical method to assess and examine existing laws

¹⁶ Ismail Rumadan, "Problematika Eksekusi Putusan Pengadilan Tata Usaha Negara," *Jurnal Hukum Dan Peradilan* 1, no. 3 (November 30, 2012): 435, <https://doi.org/10.25216/jhp.1.3.2012.435-462>.

¹⁷ Dikdik Somantri, "Challenges in Execution of Court Decision To Strengthen The Administrative Court Charisma," *Jurnal Hukum Peratun* 4, no. 2 (August 31, 2021): 123–40, <https://doi.org/10.25216/peratun.422021.123-140>.

¹⁸ Yulius, "Diskursus Lembaga Eksekusi Negara Dalam Penegakan Hukum Di Indonesia / The Discourse Of State Execution Institution In Indonesian Law Enforcement."

¹⁹ Irwansah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2022).

and legal norms.²⁰ The utilized legal resources include the state administrative court statute available on the JDIH website. Additional legal documents comprise secondary and tertiary sources that reinforce the application of legal rules or concepts within this document. The data is conveyed through narrative form and subjected to qualitative analysis using content analysis.

Result and Discussion

A. The Historical Development of The *Contrarius Actus* Principle in Administrative Law

Legal principles are a fundamental aspect of the law, serving as the fundamental guidelines within the legal system that shape national laws, legal practices, and the administration of justice.²¹ Sudikno Mertokusumo asserted that principles constitute the foundational ideas underlying the establishment of specific regulations, which are reflected in laws and regulations. Legal principles can be discerned by identifying the overarching qualities within legal regulations.²² Satjipto Rahardjo asserted that legal principles form the essence of legal rules and serve as the foundation for creating such regulations.²³ Specific legal requirements must not conflict with legal concepts, judicial rulings, legal enforcement, or the foundational basis of legal thought or opinion.²⁴

Klanderman, as cited by Sudikno Mertokusumo, asserted that legal principles serve two functions—initially, the function in jurisprudence and, subsequently, the function in legal scholarship. Legal principles serve to legitimize and counter the function of the law itself. They

²⁰ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris* (Depok: Perneradamedia Grup, 2018).

²¹ Dilshod Mustafakulov, “Principles Of Law And Their Place In The Legal System,” *Review of Law Sciences* 7, no. 3 (September 27, 2023): 17–23, <https://doi.org/10.51788/tsul.rols.2023.7.3./NP2121>.

²² Mertokusumo Sudikno, *Penemuan Hukum Sebuah Pengantar Edisi Revisi* (Yogyakarta: Cahaya Atma Pusaka, 2014).

²³ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Alumni, 1986).

²⁴ Achmad Ali, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence): Termasuk Interpretasi Undang-Undang (Legisprudence)* (Jakarta: Kencana, 2012).

enforce legal rules and impose obligations on the parties involved. Moreover, legal concepts contribute to the enhancement of the legal system. In the field of legal science, legal principles provide a comprehensive framework while also guiding, regulating and clarifying legal norms.²⁵ Legal principles possess specific characteristics: abstract, general in nature, lack a hierarchical structure, dynamic, and function as assumptions or ideals.²⁶ Moreover, due to their dynamic legal principles, conflicts between legal principles may arise, they cannot completely invalidate one another.

Legal principles function as a source of law and constitute a crucial subsystem within the legal framework. They embody cultural values and serve as a foundational basis for evaluating positive legislation. Nieuwenhuis asserts that legal principles impart an ethical component to the law.²⁷ Similarly, Bagir Manan emphasizes that legal principles encapsulate values and cultural messages that should be reflected in legal regulations.²⁸ Legal principles serve as the ontological foundation for both formulating and implementing the law. This underscores their paramount role within the legal system. They serve as sources of law, standards for judgment, ontological foundations, and the basis for creating and enforcing legal regulations. Additionally, they provide a scientific framework for legal reasoning and opinion.

The concept of *contrarius actus*, derived from Roman law, asserts that the entity executing a legal provision inherently possesses the authority to annul or alter it. This principle is fundamental in administrative law, enabling adaptability in decision-making and permitting the responsible authority to rescind or modify decisions when necessary. Originally recognized within the Roman legal system, particularly in administrative decisions, *Contrarius actus* was designed to maintain oversight and adaptability. This concept was later assimilated

²⁵ Sudikno, *Penemuan Hukum Sebuah Pengantar Edisi Revisi*.

²⁶ Zainal Arifin Mochtar and Eddy OS Hiariej, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas Dan Filsafat Hukum* (Yogyakarta: Red and White, 2021).

²⁷ Sudikno, *Penemuan Hukum Sebuah Pengantar Edisi Revisi*.

²⁸ Khurul Anam and Inna Qomariyah, "Asas-Asas Hukum Islam Dalam Hukum Modern," *Al Maqashidi: Jurnal Hukum Islam Nusantara* 3, no. 2 (2020), <https://doi.org/10.32665/almaqashidi.v3i2.873>.

into European legal traditions, influencing the development of public administration regulations in France and Germany. It was played a crucial role in administrative remedies, enabling legal institutions to adjust to evolving circumstances. As a fundamental aspect of modern administrative law, this principle allows governments to amend decisions in response to errors or changing conditions, thereby ensuring legal continuity. Rooted in ancient legal traditions, the *contrarius actus* principle remains a fundamental doctrine in administrative law, providing corrective mechanisms and adaptability in contemporary governance.

The principle gained prominence in 19th- and 20th-century European administrative law, especially in France and Germany, as it regulated administrative acts and facilitated significant modifications in public decisions. France's *Conseil d'État* applied the *contrarius actus* principle to allow government officials to amend their decrees without judicial review. In Germany administrative law, the principle enabled authorities to revoke illegal or obsolete decisions, ensuring legal adaptability. The implementation of this concept was crucial in establishing a more dynamic and responsive administrative structure in these countries. By embodying legal flexibility, the *contrarius actus* principle was integrated in administrative law to enhance justice and efficiency in contemporary governance beyond strict obedience to prior rulings. Developed in European legal systems, this principle continues to play a vital role in modern administrative procedures, empowering public authorities to act decisively and correct errors.

The *contrarius actus* principle is a universal tenet in administrative law that fosters governmental accountability and adaptability, especially in regions where stability requires modification and reform. Yasin highlight that this principle is frequently applied in European Union law, allowing institutions to annul or amend decisions that are no longer valid.²⁹ Additionally, the principle assists administrative agencies in the United States in adjusting regulations in response to legal challenges or

²⁹ Muhammad Yasin Izhharulhaq, Adrian E Rompis, and Amelia Cahyadi, "The Role of The Contrarius Actus Principle in Oversight of The Growth and Development Of Community Organizations," *Yustisia Jurnal Hukum* 8, no. 3 (February 2, 2020): 432, <https://doi.org/10.20961/yustisia.v8i3.31702>.

policy changes. The United Nations also employs the concept to ensure adaptability in their decision-making procedures. By allowing legal systems to adapt to evolving circumstances, the *contrarius actus* principle helps maintain public confidence and legitimacy in contemporary administration. Widely utilized worldwide, this principle remains essential in administrative law, allowing governments and organizations to respond to change while upholding legal integrity.

In general, the *contrarius actus* principle, in the context of implementing state administrative court decisions, authorizes the government administration system the responsibility for enforcing administrative court decisions. In Switzerland, a judge can appoint another authority if deemed better suited to enforce a court decision.³⁰ In other legal system, such as that of Congo, the judge submits a request to the President of the Republic, who then orders the enforcement by This approach bears similarities to Finland, where the execution of court decisions is supervised by the Minister of Justice.³¹ Based on this explanation, it can be concluded that Switzerland, Congo, and Finland delegate enforcement authority to the entity with the greatest power within their respective government administration systems.

B. The Position and Consequences of The Contrarius Actus Principle in Implementing Administrative Court Decisions

The *contrarius actus* principle is embedded within Indonesia's Law on State Administrative Courts. Although the law does not implicitly mention the *contrarius actus* principle, it can be inferred that the State Administrative Court Law accommodates it. For example, Article 116 of the law states that every ruling of the State Administrative Court with enduring legal authority is entrusted once more to the administrative officers being litigated against for execution of the court's decision.³²

³⁰ Anonymous, "THE EXECUTION OF DECISIONS OF THE ADMINISTRATIVE COURT" (Madrid, 2004).

³¹ *Ibid.*

³² Ida Ayu Rara Dwi Maharani and Putu Tuni Cakabawa Landra, "Implikasi Hukum Pengaturan Eksekusi Putusan Ptun Dalam UU PTUN Terhadap Efektifitas

Implementation, which prioritizes the self-respect of administrative officials, implies that decisions are implemented based on their legal awareness.³³ The *contrarius actus* principle establishes administrative officials as parties who must be the executors of decisions in state administrative courts, given their authority to issue state administrative rulings.

The execution of rulings in state administrative disputes differs from those in general, religious, and military courts. The subsequent table contrasts the execution of decisions across the four judicial contexts:

TABLE 1. Comparison of Decision Implementation Across Four Judicial Institutions

Judicial Jurisdiction	Execution of Judgment	Legal Foundation
State Administrative Court	Executed by the pertinent administrative authorities, there exists no enforcement mechanism to compel the officials to perform.	Law No. 5 of 1986 on State Administrative Courts (amended by Law No. 9 of 2004 and Law No. 51 of 2009), Article 116 about executing administrative decisions.
General Court - Criminal cases	The prosecutor executes the criminal judgment. If the offender receives a prison sentence, the prosecutor will enforce the verdict at a correctional facility.	KUHAP (Code of Criminal Procedure), Law No. 8 of 1981, Article 270 concerning the enforcement of criminal judgments by prosecutors.

Penyelesaian Sengketa Tata Usaha Negara,” Kertha Wicara : Journal Ilmu Hukum 1, no. 9 (2019), <https://garuda.kemdikbud.go.id/documents/detail/1846304>.

³³ W Riawan Tjandra, “Fungsi Peradilan Tata Usaha Negara Dalam Mendorong Terwujudnya Pemerintah Yang Bersih Dan Berwibawa (Clean and Strong Government)” (Atma Jaya, 2015).

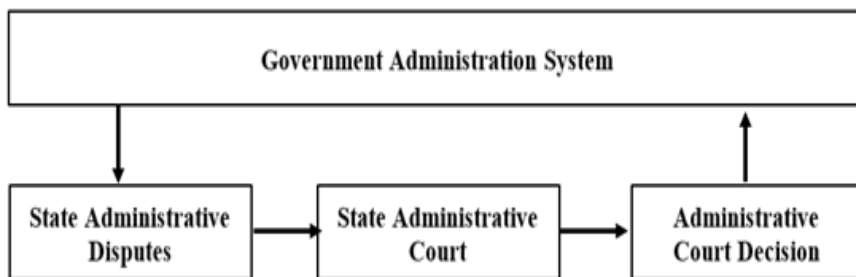
General Court - civil cases	The execution of civil decisions is conducted by the bailiff following the directive of the Court President. Execution may manifest as actual execution, monetary payment, or the adjudication of rights.	HIR (Herziene Indonesisch Reglement) Articles 195-208, RBG (Rechtsreglement voor de Buitengewesten) Articles 1033-1052 regarding the procedure for executing civil decisions.
Religious Courts	The executor of a religious court decision is the Bailiff or Substitute Bailiff. Bailiffs will execute a religious court ruling following the issuance of a Stipulation of Execution Order by the Chairman of the Religious Court.	Article 54 of Law No. 7 of 1989, amended by Law No. 3 of 2006 and Law No. 50 of 2009, along with Articles 196 and 197 of the HIR (Herziene Indonesisch Reglement) or Articles 207 and 208 of the R.Bg (Rechtsreglement voor de Buitengewesten).
Military Court	The implementation of military court decisions is conducted by the commander of the relevant unit for enforcement of sentences against military personnel who have been convicted.	Law No. 31/1997 on Military Courts, Articles 143-149, pertaining to the implementation of decisions and the responsibilities of unit commanders in executing decisions within the military court framework.

Source: Data processed from laws and regulations

The comparison chart above indicates that, except for the State Administrative Court, every judicial system has an institution or party responsible for executing judgments when the losing side refuses to comply. Additional entities participate in implementing the decision. Secondly, the State Administrative Court lacks a designated institution

or party mechanism responsible for execution, as enforcement is exclusively the responsibility of the relevant administrative official. Unlike other courts, the State Administrative Court lacks further enforcement mechanisms such as prosecutors, bailiffs, or commanders, to implement its decisions. This presents significant challenges in upholding justice and legal certainty within public administration.

In his book *Basic Concepts and Principles of State Administrative Justice*, Umar Dani elucidates that the state administrative dispute process constitutes a cycle within the government administration system. Once a dispute enters the judicial system for resolution, it subsequently returns to the government administration system for implementation.³⁴ An illustration of state administrative issues, as articulated by Umar Dani, is as follows:



The graphic above clearly illustrates the application of the *contrarius actus* principle in resolving state administrative conflicts. They commence with and conclude with the governmental administration system. Decisions concerning the authority to annul and the authority to impose administrative penalties are likewise integrated into the government administration system. The execution of the decision within the government administration system will adhere to the circumstances outlined in the fundamental regulations for the annulment of decisions in the government administration system.

The lack of a specialized execution institution in the enforcement of State Administrative Court decisions exemplifies the application of the *contrarius actus* principle. This absence, as stipulated in the State Administrative Court Law is evident in Article 97, paragraphs (7), (8), and (9). The article states that the annulment of a state administrative

³⁴ Dani, *Konsep Dasar Dan Prinsip-Prinsip Peradilan Tata Usaha Negara*.

decision can solely be executed by the state administrative agency or official who initially issued the decision. The State Administrative Court has the authority to annul the disputed administrative decision but cannot issue a new administrative decision to replace the annulled one. Similarly, when a plaintiff petitions a state administrative body or official for a decree, it is not the state administrative court judge who issues the decree but rather the contested state administrative body or official. The judge merely issues an order that constitutes a decision with enduring legal consequences.

C. Challenges to The Application of The *Contrarius Actus* Principle in The Implementation of State Administrative Decisions

Issues arise when the *contrarius actus* principle, foundational to state administrative court law, becomes an impediment, particularly in the execution of judgments. The problem stems from the reluctance of administrative personnel in Indonesia to execute state administrative judgments that hold permanent legal authority. According to the Execution Monitoring Evaluation of the Directorate General of Military Court and State Administrative Court (Badilmiltun), data from 2022 indicates that voluntary executions constituted approximately 2% of the total 2,099 legally binding cases, while in 2023, voluntary executions accounted for about 3% of the total 1,334 legally binding cases. In 2022, around 8% of the total 2,099 cases involved demands for execution due to non-implementation of legally binding decisions, whereas in 2023, this figure increase to approximately 20% of the total 1,334 cases. Research by Derks and Romijn explains that in dismissal cases with political implications, state administrative officials tends to be disobedient in implementing state administrative court decisions.³⁵ This data highlights the significant potential for administrative bodies or personnel to fail in executing legally enforceable decisions.

³⁵ Milou Derks and Henny Romijn, "Sustainable Performance Challenges of Rural Microgrids: Analysis of Incentives and Policy Framework in Indonesia," *Energy for Sustainable Development* 53 (December 2019): 57–70, <https://doi.org/10.1016/j.esd.2019.08.003>.

The disobedience of administrative officers in Indonesia warrants serious attention and should be regarded as a significant issue. Tedi Sudrajat emphasizes that the adherence of administrative officials is crucial as it directly correlates with national development; the advancement or regression of human civilization is reflected in the efficacy of a country's administrative practices.³⁶ Moreover, as executors of public service and protection duties for public welfare, administrative officials must ensure that their authority aligns with the fundamental principles of good governance.³⁷ Therefore, the role of administrative officials is paramount in achieving the objectives of the welfare state that Indonesia aspires to uphold.

An administrative official is defined as a competent and law-abiding individual, known as an official *Nobile*, who adheres to a professional code of ethics. The appointment of administrative officials is governed by two systems: the merit system and elections. The merit system reflects professional staffing, in which the placement of employees and officials is determined by using performance, competence, and track record as a measuring instrument for appointment.³⁸ The term "merit system" derives from *merit* or *meritocracy*, referring to a political framework that allocates greater opportunities and incentives to individuals based on their accomplishments or competencies relevant to specific positions.³⁹ This system aims to identify suitable candidates with integrity, competence,

³⁶ Tedi Sudrajat, "Perwujudan Good Governance Melalui Format Reformasi Birokrasi Publik Dalam Perspektif Hukum Administrasi Negara," *Jurnal Dinamika Hukum* 9, no. 2 (May 28, 2009), <https://doi.org/10.20884/1.jdh.2009.9.2.220>.

³⁷ Henny Juliani, "Akibat Hukum Penyalahgunaan Wewenang Administrasi Pejabat Pemerintahan Yang Menimbulkan Kerugian Keuangan Negara," *Administrative Law and Governance Journal* 2, no. 4 (November 5, 2019): 598–614, <https://doi.org/10.14710/alj.v2i4.598-614>.

³⁸ Nurwita Ismail, "Merit System Dalam Mewujudkan Transparansi Pembinaan Karier Aparatur Sipil Negara," *Al-Adl : Jurnal Hukum* 11, no. 1 (June 26, 2019): 33, <https://doi.org/10.31602/al-adl.v11i1.2023>.

³⁹ Afisa Afisa, Suswanta Suswanta, and Muchamad Zaenuri, "Merit System Innovation through the SIPINTER Application (Information System for Self-Assessment of Merit System Implementation) in Indonesia," *Jurnal Ilmu Sosial* 22, no. 2 (January 16, 2024): 50–66, <https://doi.org/10.14710/jis.22.2.2023.50-66>.

and legal adherence for strategic roles in ministries, state agencies, and local governments.

The general election serves as a mechanism for selecting leaders and representatives to fill specific roles. The participation of leaders and representatives from the general election process is anticipated to improve governance in Indonesia.⁴⁰ Democratic elections serve to maintain the populace's sovereignty and to fulfill the state's objectives as stipulated in the Preamble of the 1945 Constitution.⁴¹ It is an electoral system designed to select administrative officials who possess governance capabilities and are typically elected with honesty and legality.

Utilizing merit systems and elections is an effective method for identifying the most suitable candidates for administrative roles. While the merit system is implemented, its execution is often marred by corruption, collusion, nepotism, and political interference, leading to the clandestine appointment of candidates in violation of established protocols.⁴² Patronage remains a significant obstacle, as political considerations rather than meritocratic standards often dictate appointments.⁴³ Additionally, lack of transparency in recruitment and promotion processes compromises the merit system's efficacy.⁴⁴ These issues perpetuate inefficiency and obstruct efforts to professionalize the bureaucracy. Without steadfast adherence to meritocratic principles, the system cannot foster an effective and equitable civil service.

⁴⁰ Mahesa Rannie, "Legal Regulations for The General Election System in Indonesia From The 1955 Election to The Concurrent Election Of 2019," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 20, no. 2 (December 31, 2020): 247–64, <https://doi.org/10.19109/nurani.v20i2.6927>.

⁴¹ Achmad Edi Subiyanto, "Pemilihan Umum Serentak Yang Berintegritas Sebagai Pembaruan Demokrasi Indonesia," *Jurnal Konstitusi* 17, no. 2 (August 19, 2020): 355, <https://doi.org/10.31078/jk1726>.

⁴² Yahya Pandega Putra et al., "Policy of A Merit System to Make A Good and Clean Government in The Middle of Bureaucratic Politicization," *Journal of Government and Civil Society* 4, no. 2 (October 22, 2020): 159, <https://doi.org/10.31000/jgcs.v4i2.2393>.

⁴³ Adi Suryanto and Mariman Darto, "Penerapan Kebijakan Sistem Merit: Praktik Terbaik Di Lembaga Administrasi Negara," *Jurnal Borneo Administrator* 16, no. 3 (December 28, 2020): 401–22, <https://doi.org/10.24258/jba.v16i3.744>.

⁴⁴ Andika Yasa et al., "Penguatan Reformasi Birokrasi Menuju Era Society 5.0 Di Indonesia," *Nakhoda: Jurnal Ilmu Pemerintahan* 20, no. 1 (June 30, 2021): 27–42, <https://doi.org/10.35967/njip.v20i1.139>.

In Indonesia, the electoral system fundamentally incorporates political parties, leading to the nomination of candidates being influenced by a political process that often prioritizes individuals in positions of power over those with relevant expertise and qualifications. Husin et al. claims that the stages of vote counting and recapitulation election processes in Indonesia are tainted by financial corruption, voter manipulation, and inadequate oversight, eroding the essential principles of equity and transparency.⁴⁵ Moreover, research by Hariyanti et al. demonstrates that a lack of knowledge and political awareness among voters results in electoral practices that deviate from established democratic ideas.⁴⁶ These challenges undermine the integrity of democracy in Indonesia, as electoral results are often shaped more by political patronage and financial power than by informed voter choices and adherence to governance norms. This explains why administrative personnel fail to uphold the law, particularly in executing decisions with permanent legal authority, due to flaws in the implementation of the positioning mechanism.

The inadequate execution of the merit system and electoral procedures in Indonesia is closely correlated with low legal compliance among administrative personnel. A flawed merit system that allows political influence in civil servant appointments leads to promotions based on personal connections rather than competence. Moreover, electoral procedures, often influenced by financial politics, result in the selection of public officials who prioritize personal or political interests over legal compliance. Hassan highlights how political patronage in civil service recruitment weakens the perception of accountability and adherence to legal norms among bureaucrats in developing countries.⁴⁷

⁴⁵ Luthfi Hamzah Husin et al., "Malpraktik Pemilu Dan Korupsi: Analisis Terhadap Proses Penghitungan Dan Rekapitulasi Pada Pemilu Indonesia 2019," *Integritas: Jurnal Antikorupsi* 7, no. 1 (June 25, 2021): 57–78, <https://doi.org/10.32697/integritas.v7i1.720>.

⁴⁶ Hariyanti Hariyanti, Cecep Darmawan, and Iim Siti Masyitoh, "Peran Partai Politik Dalam Meningkatkan Partisipasi Politik Kader Perempuan Melalui Pendidikan Politik," *Jurnal Civics: Media Kajian Kewarganegaraan* 15, no. 1 (May 31, 2018): 74–85, <https://doi.org/10.21831/jc.v15i1.17659>.

⁴⁷ Mai Hassan, Horacio Larreguy, And Stuart Russell, "Who Gets Hired? Political Patronage and Bureaucratic Favoritism," *American Political Science Review* 118,

The study underscores that such appointments erode institutional trust and effectiveness. This situation creates a cycle of poor governance, where officials frequently disregard the law and neglect their legal responsibilities of administrative personnel in executing state administrative court decisions, further exacerbating the erosion of the rule of law and legal certainty in public administration.

The non-compliance of administrative personnel with court decisions may undermine the legitimacy of government entities in the public's perception. This failure to comply fosters the belief that government institutions disregard the rule of law, leading to public skepticism regarding their efficacy and integrity. When administrative authorities neglect to execute court decisions, public confidence in the credibility and accountability of government institutions significantly diminishes. Violations of legal rulings not only damage the nation's reputation domestically but also undermine its standing internationally, particularly regarding transparency and justice. Public reactions to administrative officials' non-compliance frequently result in heightened criticism and demands for institutional reform. Individuals who witness violations of their rights may experience a decline in trust towards governmental institutions. Furthermore, persistent non-compliance also increases the potential for more stringent legal interventions, including enforcement by judicial or law enforcement entities.

The challenges in applying the *contrarius actus* concept concerning execution led the Supreme Court to issue implementation guidelines Number 01/KM.TUN/HK2.7/Juklak/VII/2024. These instructions validate the reinforcement of the *contrarius actus* concept while still conferring execution authority to the administrative officials. This implementation guidelines clarify ambiguities in the formulation of article 116 juncto article 119 of the State Administrative Court Law. The vagueness in these provisions pertain to issues such as automatic execution protocols, administrative sanctions, coercive measures, compensation payments, rehabilitation, and restitution. However, the author contends that certain explanations, especially concerning compensation payments, remain ambiguous. These payments are

mandated within internal state administrative bodies by budget user or their proxies, potentially harming state finances and leading to criminalization risk—especially since the implementation guidelines function as policy rules limited to the internal use.

D. The Function of Ombudsman Republic Indonesia and The Administrative Court is to Enhance Legal Compliance among Administrative Officers

The Ombudsman monitors and enforces administrative law, especially in cases of authority abuse or non-compliance with court orders. The legal basis for Ombudsman's authority is outlined in Article 4 of the Ombudsman Law, which explains the eradication and prevention of maladministration. Maladministration, in the context of executing state administrative court decisions, refers to the negligence or disregard of an administrative official's legal obligation to implement court rulings. This is further reinforced in Article 72 paragraph (1) of the Government Administration Law, which explicitly imposes an obligation on administrative official to comply with court decisions.

The Ombudsman, as an independent body, mediates between citizens and the government, promoting good governance. In practice, the Ombudsman investigates citizen complaints regarding maladministration, including instances where public officials fail to execute court judgments.⁴⁸ This role is crucial in preventing administrative gridlock and ensuring the enforcement of legal decisions. Through recommendations and findings, the Ombudsman exerts pressure on officials to comply with the law. The institution effectively promotes legal adherence through non-coercive strategies, such as fostering public accountability and transparency. The presence of an Ombudsman can significantly reduce instances of non-compliance by providing a formal avenue for public complaints and ensuring administrative responsibility.⁴⁹ The Ombudsman's investigation and

⁴⁸ Noviana Noviana, "Persandingan Lembaga Ombudsman Daerah Istimewa Yogyakarta Dengan Ombudsman Perwakilan Daerah Provinsi," *Perspektif* 26, no. 1 (January 30, 2021): 1–16, <https://doi.org/10.30742/perspektif.v26i1.790>.

⁴⁹ Mulyono Jamal et al., "Analysis of Alternative Dispute Resolution in Non-Litigation Dispute Resolution on Islamic Mortgage: At the Ombudsman

recommendations serve as powerful tools for enforcing legal standards within public authorities.⁵⁰ By advocating transparency and accountability, the Ombudsman reinforces the rule of law and strengthen public trust in administrative institutions.

The Ombudsman examines systemic administrative problems and proposes remedies to enhance officials' adherence to the law. Mitigating violations and inefficiencies within governmental institutions is essential. By analyzing non-compliance trends and administrative issues, the Ombudsman develops improved policies and legislative frameworks, promoting legal compliance and enhancing governance procedures through institutional reforms. The Ombudsman plays a crucial role in policy development by pinpointing procedural deficiencies and proposing modifications to ensure adherence to administrative law.⁵¹ Furthermore, Bradford highlights how users perceive the Ombudsman as a reliable mechanism for handling complaints, contributing to more efficient policy development and the improvement of administrative practices.⁵² The Ombudsman's capacity to propose systemic reforms ensures that administrative procedures evolve to meet legal standards. This proactive strategy not only addresses existing non-compliance concerns but also mitigates future infractions, fostering effective and responsible governance.

The Ombudsman safeguards citizens' rights by facilitating reporting of non-compliance or administrative abuse, thereby promoting accountability and transparency in public institutions. Citizens encountering administrative unfairness, such as officials' failure to implement court judgments, can submit complaints to the Ombudsman.

Institution Yogyakarta" 17, no. 1 (May 2021): 207–28, <https://doi.org/10.21111/tsaqafah.v17i1.6704>.

⁵⁰ Nurdin Nurdin, "Kekuatan Hukum Rekomendasi Ombudsman Sebagai Bentuk Pengawasan Terhadap Pelayanan Publik," *JATISWARA* 36, no. 2 (August 2, 2021): 205–18, <https://doi.org/10.29303/jtsw.v36i2.314>.

⁵¹ Ria Maya Sari and Rosidiana, "Analisa Peran Pencegahan Maladministrasi Dalam Positioning Ombudsman Jangka Panjang," *Dejure* 13, no. 2 (October 23, 2021), <https://doi.org/10.36277/jurnaldejure.v13i2.553>.

⁵² Ben Bradford, Naomi Creutzfeldt, and Felix Steffek, "Thinking Holistically About Procedural Justice in Alternative Dispute Resolution: A Case Study of the German Federal Ombudsman Scheme," *Law & Social Inquiry* 48, no. 3 (August 22, 2023): 748–79, <https://doi.org/10.1017/lsi.2022.55>.

The Ombudsman examines these grievances and provides suggestions, which may entail disciplinary measures against non-compliant authorities or reforms to avert future misconduct.⁵³ This process fosters a more responsible public administration. Citizen complaints submitted to the Ombudsman lead to direct interventions, facilitating the resolution of administrative issues and ensuring that public authorities comply with their legal responsibilities.⁵⁴ This approach significantly enhances public trust in governmental institutions by offering an accessible and unbiased means of redress. The Ombudsman plays a crucial role in reporting non-compliance, safeguarding individual rights and enhancing public administration accountability, fostering citizen-centric supervision, transparency, and legal integrity in administrative procedures.

Alongside the ombudsman, the State Administrative Court contributes to enhancing the legal compliance of administrative personnel. The administrative court has the authority to conduct judicial review of administrative decisions, ensuring that officials operate within their legal jurisdiction.⁵⁵ This function ensures that all administrative actions adhere to legal status, thereby safeguarding people's rights. Through judicial review, administrative courts assess the legitimacy of administrative decisions and verify their conformity with the principles of good governance. By nullifying judgments that contravene the law, administrative courts protect the public from arbitrary actions by government officials. The significance of judicial review in ensuring that administrative decisions comply with the rule of law, thereby mitigating the potential for abuse of power. Administrative court judicial review

⁵³ 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): 163, <https://doi.org/10.25216/jhp.3.2.2014.163-176>.

⁵⁴ Hendra Nurtjahjo, "Perbedaan Teoritis Antara Lembaga Penyelesaian Kasus Maladministrasi (Ombudsman) Dengan Lembaga Peradilan Administrasi (PTUN)," *Selidik Jurnal Hukum Dan Bisnis* 2, no. 2 (December 2016), <https://doi.org/10.35814/selidik.v2i2.646>.

⁵⁵ Iita Lianti, Fiorentina Elfrida Shanty, and Windha Puji Astuti, "Peran PTUN Dalam Eksekusi Putusan Yang Berkekuatan Hukum Tetap Sebagai Langkah Efektif Penyelesaian Sengketa PTUN," *Yustisi* 10, no. 2 (2023), <https://doi.org/10.32832/yustisi.v10i2.14325>.

processes have effectively reinforced the legitimacy of government actions, especially in safeguarding citizen rights. The judicial review role of administrative courts is essential for verifying the legality of administrative decisions and safeguarding citizens from abuses of authority. By examining these judgments, the administrative court fortifies the rule of law within public administration.

The administrative court also monitors the enforcement of its decisions to guarantee administrative authorities' compliance with court findings. This follow-up method enhances the responsibility of public officials, ensuring the effective implementation of decisions. When officials ignore to enforce administrative court orders, the court can take coercive measures that may include administrative sanctions and/or fines against the administrative officials.⁵⁶ This role discourages non-compliance and guarantees public officials encounter repercussions for ignoring legal decisions. The administrative court's capacity to oversee and implement its decisions is crucial for maintaining adherence throughout public administration. Furthermore, robust monitoring and enforcement systems markedly diminish non-compliance among administrative personnel. Monitoring and enforcement methods in administrative courts are crucial for ensuring compliance with court decisions by administrative personnel. The administrative court strengthens its power and ensures legal conformity in public administration by implementing follow-up actions.

Conclusion

The principle of *contrarius actus* is a significant tenet in the pursuit of a model for executing state administrative decisions with legal certainty and equity, as it designates the administrative official as the executor of decisions that possess permanent legal force. Administrative personnel in key positions within the administrative system must possess substantial legal expertise and integrity. This consensus stems from the evaluation of appointment procedures through the merit system and

⁵⁶ Marcelina Siti Nabila and Pieter E Latumenten, "Penerapan Sanksi Administratif Terhadap Notaris Yang Melakukan Pelanggaran Terhadap Jabatannya (Studi Putusan Pengadilan Tata Usaha Negara No. 235/G/2019/PTUN.KT)," *UNES Law Review* 6, no. 2 (December 15, 2025), <https://doi.org/10.31933/unesrev.v6i2.1354>.

elections, ensuring that individuals in administrative roles possess the adequate competence. It is unequivocal that when a state administrative decision attains permanent legal force, administrative authorities are obligated to execute it.

There is a potential risk that administrative personnel may disregard the enforcement of court decisions with permanent legal authority. This highlights the consequences of inadequate appointment procedures for administrative positions through the merit system and elections. Corruption, collusion, nepotism, and political interference continue to obstruct the effective selection of administrative officers. As a result, individuals lacking the requisite capacity and integrity may assume administrative roles, which adversely affects the increasingly challenging execution of state administrative decisions.

Two institutions significantly contribute in the enhancement of administrative law enforcement. The State Administrative Court oversees the execution of its decisions to ensure that administrative authorities adhere to court decisions. Meanwhile, the Ombudsman oversees and enforces administrative law, particularly in instances of authority abuse or failure to comply with court rulings. To clarify the authority of the Ombudsman in overseeing the compliance of administrative officials in implementing state administrative court decisions, it is necessary to amend the Ombudsman Law. This amendment should explicitly grant this authority to conduct investigations into instances of non-compliance by administrative officials, ensuring greater effectiveness in practice.

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