

JURIDICAL INTERPRETATION OF NON-FULLY EXECUTABLE JUDGMENTS IN THE ADMINISTRATIVE COURT

Kusman

Faculty of Law, Diponegoro University, Indonesia
kusmantsaqif@gmail.com

Hambali

College of Local Administration, Khon Kaen University, Thailand
hambali.b@kkumail.com

Yos Johan Utama

Faculty of Law, Diponegoro University, Indonesia
yosjohanutama@yahoo.com

Lita Tyesta Alw

Faculty of Law, Diponegoro University, Indonesia
litatyestalita@gmail.com

Abstract

Judgments that cannot be fully executed are frequently encountered in civil service disputes. Rehabilitation obligations are often hindered by changes in circumstances, which have consequently given rise to the notion of compensation. Determining compensation amounts also faces challenges, particularly due to tensions between legal norms and practical realities. This study pursues two main objectives: first, to examine the criteria that characterize judgments that cannot be fully executed, and second, to describe the implementation of compensation as a substitute mechanism in such cases. The research adopts a normative legal methodology utilizing statutory and conceptual approaches. The findings lead to two primary conclusions: first, judgments that cannot be fully executed are identified in cases where rehabilitation obligations in civil service disputes face specific obstacles, including (1) the plaintiff's legal status no longer qualifying them to return to their former position; (2) the plaintiff's position having been filled by another person; and (3) changes in the organizational structure.

Second, the implementation of compensation is based on actual losses suffered by the plaintiff resulting from a State Administrative Decision that was declared invalid by the court. The amount of compensation is determined through an agreement between the plaintiff and the defendant. If such an agreement cannot be reached, the chief judge of the administrative court is authorized to determine a fair amount of compensation in accordance with the principles of propriety and reasonableness. The study highlights the need for procedural reform to address the gap between legal provisions and their practical application in executing administrative court judgments.

Keywords: Execution, Compensation, Rehabilitation.

Introduction

Court judgments represent the culmination of the judicial process in determining the legality of government decisions and simultaneously mark the end of the judiciary's role. Such judgments must be respected and followed by government bodies and/or officials when carrying out or refraining from actions within their duties as public administrators. The authority and mechanism of execution, however, rest entirely with the Government Bodies and/or Officials being sued in accordance with applicable laws and regulations.

By law, the authority to execute a judgment is vested in the defendant official. Thus, the success or failure of judgment execution cannot be attributed solely to the court or its presiding judge. To prevent overreach, judicial authority must conform strictly to what is provided by statute. In practice, many unresolved administrative disputes brought before the State Administrative Court (*Pengadilan Tata Usaha Negara*) fail at the execution stage, even though the execution is formally the responsibility of the administrative body. Although the chief judge is granted supervisory authority over execution, the court is often blamed for execution failures, to the point that the Administrative Court is commonly labelled a 'toothless tiger'.

The chief judge's supervisory role in execution is not accompanied by coercive instruments or any effective enforcement power, making it vulnerable to evasion. The complexity of the execution process within the Administrative Court stems from the influence of the doctrine of separation of powers, which draws a strict line between judicial and

executive functions. This principle, while fundamental to constitutional governance, creates inherent tensions in administrative law enforcement. The separation of powers doctrine requires careful calibration to ensure judicial oversight remains effective without encroaching upon executive autonomy¹. The outcome of the judicial function is a judgment that substantively determines the legality of a State Administrative Decision or acts and imposes an obligation upon the defendant, as stated in the ruling. However, the execution of the judgment falls under the executive function and lies beyond the judiciary's authority.

In general, there are three types of judgment execution in the Administrative Court: first, the defendant voluntarily complies with the court's judgment; second, the defendant refuses to comply; and third, the judgment cannot be executed. The latter arises in two conditions: (1) when the judgment is incomplete², and (2) when circumstances have changed. This study focuses specifically on judgments that cannot be executed due to subsequent changes in circumstances.

The lengthy examination process in the State Administrative Court has implications for executing judgments. The ordinary procedure, commonly applied in Administrative Court proceedings, often proves vulnerable in civil service disputes. This research analyzes three civil service dispute cases in which judgments could not be fully executed: Case No. 294/G/2018/PTUN-JKT, Case No. 31/G/2021/PTUN.SRG, and Case No. 099/G.TUN/1996/PTUN-JKT. The implementation of judgments in these cases illustrates the difficulty faced by Government Bodies and/or Officials in restoring the plaintiff's reputation. As a result, the plaintiffs were legally entitled to

¹ Jon D. Michaels, "An Enduring, Evolving Separation of Powers," *Columbia Law Review* 115, no. 3 (2015).

² An incomplete judgment order was issued in the case 35/G/2019/PTUN-SRG in conjunction with Judgment Number 71/B/2020/PT.TUN.JKT jo. Supreme Court Judgment Number 431 K/TUN/2020. The object of the claim was a decision regarding student grades and graduation status that resulted in the plaintiffs being expelled (*dropped out*) from the State College of Accountancy (*Sekolah Tinggi Akuntansi Negara* – STAN). The court's judgment only declared the contested judgment null and ordered its revocation, but did not contain any ruling to reinstate the plaintiffs as STAN students. The defendant claimed to have complied with the court's judgment, arguing that the plaintiffs' request for reinstatement could not be granted through execution because such an order was not included in the judgment.

receive monetary compensation or another form of redress from the defendant's government body or official.

Two of the three case studies reveal a pattern in which the Government Body and/or Official attempted to avoid payment of compensation commensurate with the harm suffered by the plaintiff. Their reasoning referred to Government Regulation No. 43 of 1991 concerning Compensation and Procedures for Execution in the Administrative Court, which only provides compensation ranging from IDR 100,000 (one hundred thousand rupiah) to IDR 2,000,000 (two million rupiah), an amount arguably detached from current legal and social realities.

The importance of analyzing court judgments lies in the fact that judgments serve as rich sources of legal interpretation and reasoning. However, they are often treated as secondary sources of law, inferior to statutory regulations. This trend contributes to the underdevelopment of jurisprudence in Indonesia, stemming from a lack of appreciation for the legal weight and precedential value of court rulings, especially in addressing the legislative and regulatory gaps³.

This study is particularly significant as it analyzes the gap between legal provisions and their practical implementation in the execution of administrative court judgments. By examining patterns in cases where rehabilitation cannot be fully implemented, this research offers valuable insights for procedural reform and enhancement of the administrative justice system's effectiveness. The persistent tension between formal legal frameworks and institutional realities creates a critical need for adaptive interpretative approaches that can accommodate changed circumstances while ensuring justice for plaintiffs whose rights have been violated by unlawful administrative decisions.

This study is, therefore, significant in that it aims to describe the pattern of judgments that cannot be fully executed and to analyze the legal and practical obstacles to their execution. The ultimate goal is to develop an approach to enforce administrative court judgments that are more just and legally certain. Based on the background description above, this paper will examine the criteria for identifying judgments that cannot be fully executed in the Administrative Court and how

³ Shidarta Shidarta, "Putusan Pengadilan Sebagai Objek Penulisan Artikel Ilmiah," *Undang: Jurnal Hukum* 5, no. 1 (2022), doi:10.22437/ujh.5.1.105-142.

compensation is implemented as a legal mechanism to execute judgments that cannot be fully executed in the Administrative Court.

Research Method

The primary function of legal research is to seek the truth⁴. The notion of truth referred to here is epistemological truth, which encompasses four classical theories: the correspondence theory of truth, the coherence theory, the pragmatic theory, and the semantic theory of truth. This research adopts a normative legal research method, utilizing three complementary approaches: statutory, conceptual, and case approaches. The statute approach is employed by examining the legal norms that govern the execution of judgments in the State Administrative Court, specifically Law Number 5 of 1986 on State Administrative Judiciary and Government Regulation Number 43 of 1991 concerning Compensation and Procedures for Execution in the State Administrative Court. The conceptual approach is grounded in the perspectives and doctrines that have developed within the field of legal scholarship. The case approach is implemented through systematic analysis of three paradigmatic cases (Case No. 294/G/2018/PTUN-JKT, Case No. 31/G/2021/PTUN.SRG, and Case No. 099/G.TUN/1996/PTUN-JKT) to identify patterns, judicial reasoning, and practical obstacles in executing non-fully executable judgments. This triangulated methodological approach allows for a comprehensive examination of both normative frameworks and their practical implementation challenges, with case analysis serving as the cornerstone for understanding how courts develop interpretative strategies beyond statutory limitations.

Principles and Legal Framework of Judgment Execution in the Administrative Court

The execution of a judgment is the ultimate objective of judicial proceedings. It constitutes a subsystem within the overall dispute resolution system and must be synchronized with other subsystems, particularly the adjudication process. Given the varied types of State Administrative Decisions, such as permanent decisions

⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi, Cetakan ke-9, (Jakarta: Prenadamedia Group, 2014), p. 20.

and *einmalig* (one-time) decisions, the timeliness of dispute resolution becomes a determining factor in the success of judgment execution. Timeliness and the nature of the decision are like two sides of the same coin, inseparable from one another. Procedural law thus becomes a central issue in assessing the effectiveness of dispute resolution. Article 4(2) of Law No. 48 of 2009 on Judicial Power establishes that “Courts shall assist justice seekers and endeavour in overcoming all obstacles and hindrances to achieve a simple, swift, and low-cost judicial process.”

The relationship between procedural efficiency and substantive justice reflects broader theoretical debates in administrative law. Effective administrative justice requires balancing procedural safeguards with practical effectiveness, particularly in time-sensitive employment disputes where delay can fundamentally alter circumstances⁵. Traditional remedial approaches often fail to account for whether procedural errors caused actual harm, leading to calls for more context-sensitive remedial standards⁶.

The procedural framework of the Administrative Court remains overly general; it does not differentiate between permanent and *einmalig* decisions. All disputes are handled through the standard procedure. In principle, Articles 98 and 99 of Law No. 5 of 1986 on the State Administrative Court provide alternatives to ensure that disputes can be resolved quickly. The intent behind the regulation on expedited hearings is to reduce the issuance of non-executable judgments. In practice, however, the expedited procedure is rarely applied. Courts do not proactively implement this mechanism and typically wait for the plaintiff to submit a request. Furthermore, there is no regulation regarding its continuation at the appellate or cassation level.

The current policy allocates five months for examination at the first instance, three months at the appellate level⁷, and 250 days for

⁵ Maria De Benedetto, “Effective Law from a Regulatory and Administrative Law Perspective,” in *European Journal of Risk Regulation*, vol. 9, 2018, doi:10.1017/err.2018.52.

⁶ Nicholas Bagley, “Remedial Restraint in Administrative Law,” *Columbia Law Review* 117, no. 2 (2017).

⁷ Supreme Court of the Republic of Indonesia, *Circular Letter No. 2 of 2014 concerning Settlement of Cases in the First Instance and Appeal Level Courts in 4 (four) Judicial Environments*.

cassation⁸. This lengthy dispute resolution timeline is vulnerable to failure when dealing with *einmalig* or decisions with short-term validity. Decisions or those with a short period of enforceability. Bedner, in his research, concluded that the real issue concerning the execution of administrative court judgments revolves around interim relief or suspension orders rather than final judgments, as only a few judgments have reached *inkracht* (final and binding) and are actually ready for execution⁹. In line with this, Indroharto noted that there are instances where administrative court judgments cannot be fully executed due to changes in circumstances, regulations, or legal positions that arise while the case is still pending¹⁰.

The complexity of judgment execution in the administrative court raises a fundamental question: why does judgment execution face such serious challenges? How exactly are administrative court judgments executed? To answer these questions, it is important first to present the scope of authority held by the administrative courts in resolving disputes. The authority of the Administrative Court in formulating its ruling is strictly regulated, as explained in the Elucidation of Article 53(1) of Law No. 9 of 2004 concerning Amendments to Law Number 5 of 1986 Concerning the Administrative Court, which regulates:

Individuals or private legal entities who believe that their interests have been harmed by a State Administrative Decision has harmed their interests may file a written administrative claim with the competent court requesting that the disputed State Administrative Decision be declared null and void or unlawful, with or without an accompanying claim for compensation and/or rehabilitation.

The Elucidation of the Article is:

Unlike lawsuits in civil courts, the types of claims that may be submitted to the State Administrative Court are limited to a single principal claim, namely a

⁸ Attachment to the Decision of the Supreme Court Chief Justice of the Republic of Indonesia No. 214/KMA/SK/XII/2014, December 31, 2014, concerning the Duration of Case Handling at the Supreme Court of the Republic of Indonesia.

⁹ Adriaan W. Bedner, *Pengadilan Tata Usaha Negara di Indonesia (Sebuah Studi Sosio-Legal)*, trans. Indra Krishnamurti, (Jakarta: HuMa-Jakarta, 2010), p. 364.

¹⁰ Indroharto, *Usaha Memahami Undang-Undang tentang Peradilan Tata Usaha Negara*, Buku II, Cetakan ke-9, (Jakarta: Pustaka Sinar Harapan, 2005), p. 120-124.

request that the State Administrative Decision, which has harmed the plaintiff's interests, be declared null and void or unlawful. Additional claims are only permitted in the form of compensation, and only in civil service disputes is it allowed to include an additional claim for rehabilitation.

Theoretically, a claim aimed solely at annulment is categorized as an objective claim (*recours objectif*). If the court finds that an administrative decision or act violates the law, it will declare the decision invalid and remove its legal effect by ordering its annulment. From the reasoning provided in the court's ruling, government officials are expected to draw lessons to prevent similar unlawful acts in the future. In this context, the court serves as the guardian of the legal order and an educator for the administration¹¹.

In civil service disputes, however, plaintiffs generally seek not only the annulment of a decision but also additional relief, such as the restoration of dignity, reputation, and status. This type of claim resembles a subjective claim (*recours subjectif*), in which the main objective is the protection of individual rights and interests. As the role of government in society has expanded, the corresponding principle of accountability has emerged: when a governmental act contravenes the law, affected citizens may seek redress through the courts to restore their rights. The court not only functions as a guardian of the legal order but also as a protector of citizens. The court thus plays not only a normative role as guardian of the legal order but also a protective role for the citizenry. In this sense, the court is empowered not only to annul decisions but also to provide additional remedies such as compensation, to issue injunctions, or to compel or prohibit specific actions by administrative officials. In principle, applications to the State Administrative Court are made when a decision is deemed unlawful or when there is a failure to comply with binding legal obligations (*recours en responsabilité* and *the contentieux contractuel*). In subjective claims, the court may extend beyond its judicial role and act as a substitute-administrator.¹² Consequently, the party with legal standing to bring a

¹¹ Arie Jansse Bok, "Judicial Review of Administrative decision by the Dutch Administrative Courts: *Recours Objectif* or *Recours Subjectif*? A Survey Including French and German Law", in F. Stroink dan E. van der Linden, *Judicial Law Making and Administrative Law*, (Oxford: Intersentia Antwerpen, 2005), p. 153.

¹² F. Stroink dan E. van der Linden, *Judicial Law Making and...* p. 160.

claim is an individual whose personal rights (*droit personnel violé*) have been directly violated.¹³

The State Administrative Court in Indonesia was established to resolve conflicts of interest, disputes, or legal controversies between government bodies and/or officials and citizens¹⁴. The organizational structure and principles of the Administrative Court are unique and do not strictly follow the duality of jurisdiction typically found in civil law countries¹⁵. In Indonesia, the distinction between objective and subjective claims is not formally recognized. However, based on the classification of the object of dispute and the requested relief, the Indonesian Administrative Court leans more toward the model of subjective claims. The authority of the Administrative Court to render judgments is explicitly regulated under Article 97 paragraphs (7) through (11) of Law No. 5 of 1986 on the State Administrative Court, which stipulates:

- (7) *Court Judgments can be in the form of:*
 - a. *claim dismissed;*
 - b. *claim granted;*
 - c. *claim declared inadmissible;*
 - d. *claim rendered lapsed.*
- (8) *In the case that a claim is granted, then in the Court Judgment can be stipulated obligations that must be performed by the Administrative Body or Official that issued the Administrative Decision.*
- (9) *Obligations, as referred to in paragraph (8), are in the form of:*
 - a. *revocation of the Administrative Decision concerned; or*

¹³ Petitions under *recours de pleine juridiction*, as found in tax cases, such as: (1) In *contentieux fiscal*, the court is empowered not merely to revoke a tax assessment but also to determine the exact amount of tax payable. (2) In *contentieux électoral*, the court may directly review and assess the results of an election in its judgment. See Arie Jansse Bok in F. Stroink and E. van der Linden, *Judicial Law Making and...* p. 155.

¹⁴ Republic of Indonesia, *General Explanation of Law Number 5 of 1986 concerning the Administrative Court*.

¹⁵ The judicial system in Indonesia recognizes only two institutions as the holders of judicial power: the Supreme Court (*Mahkamah Agung*) and the Constitutional Court (*Mahkamah Konstitusi*). The Supreme Court is the highest court in the state judiciary and oversees four judicial jurisdictions, including the State Administrative Court. Furthermore, see Article 24 of the 1945 Constitution jo. Articles 18 and 20 of Law Number 48 of 2009 concerning Judicial Power.

- b. revocation of the Administrative Decision concerned and issuance of a new Administrative Decision; or*
 - c. issuance of an Administrative Decision in the case that the lawsuit is based on Article 3.*
- (10) *Obligations as referred to in paragraph (9), can be accompanied by the imposition of compensation.*
- (11) *In the case that a Court Judgment, as referred to in paragraph (8), concerns civil service, then, in addition to the obligations as referred to in paragraph (9) and paragraph (10), it can be accompanied by the granting of rehabilitation.*

The judgment execution system in the Administrative Court, regulated in Article 116 of the Administrative Court Law, can be described as follows:

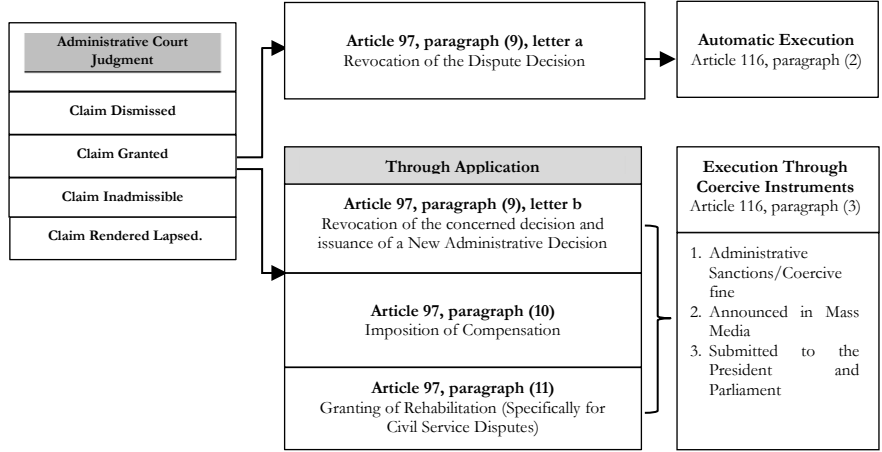


Figure 1. Scheme of Administrative Court Judgment Execution¹⁶

From the illustration above, there are two categories of judgment execution in administrative court: (1) automatic execution and (2) execution through coercive instruments.

Automatic execution is shown in Article 116, paragraph (2) of the Administrative Court Law:

If after 60 (sixty) working days, the court judgment that has obtained permanent legal force as referred to in paragraph (1) is received, and the

¹⁶ Processed from Articles 97 and 116 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 Concerning the Administrative Court.

defendant does not carry out the obligations as referred to in Article 97 paragraph (9) letter a, the disputed administrative decision no longer has legal force.

The term automatic refers to the annulment of the disputed decision by operation of law without requiring a formal request for execution submitted to the court. In this context, “automatically annulled” means that once sixty (60) days have elapsed after the judgment becomes final and binding and the defendant fails to fulfil the obligation, the decision automatically loses its legal force. In contrast, coercive execution applies in cases where the defendant is required to issue a new decision and/or provide compensation and/or rehabilitation. This is regulated under Article 116, paragraph (3) of the Administrative Court Law, which states:

In the event that Defendant is required to carry out the obligations as referred to in Article 97 paragraph (9) letters b and c, and then after 90 (ninety) working days, it turns out that the obligations are not carried out, Plaintiff submits an application to the Chief judge as referred to in paragraph (1), for the court to order the Defendant to execute the court judgment.

The main issue faced by the State Administrative Court in practice is the growing public distrust in the system or mechanism for executing court judgments¹⁷. Andriaan Bedner classified this problem as one related to fundamental concepts and procedural law¹⁸. Procedural law provides the legal basis upon which courts act. The failure of the Administrative Court to resolve disputes, particularly in relation to judgment execution, has been a subject of frequent criticism.

Various studies have identified several factors that obstruct judgment execution in the State Administrative Court. First, conceptual obstacles are rooted in legal principles. Difficulties in execution are in part influenced by universally accepted legal doctrines, such as the *contrarius actus* principle, under which the revocation or modification of a decision can only be done by the same authority that issued it. This is compounded by the doctrine of separation of powers (*trias politica*),

¹⁷ Yos Johan Utama, “Membangun Peradilan Tata Usaha Negara Yang Berwibawa,” in *Pidato Pengukuhan Jabatan Guru Besar Dalam Ilmu Hukum Pada Fakultas Hukum Universitas Diponegoro*, 2010.

¹⁸ Adriaan W. Bedner, *Administrative Courts in...* p. 345-349

which prohibits judges from implementing execution themselves, for instance, by issuing decisions mandated by the ruling¹⁹. Second, regulatory obstacles. Current laws and regulations do not adequately govern the execution mechanism and instead rely entirely on the government's good faith (moral compliance)²⁰. Third, the presence of officials who do not comply with the law.

Principles and Legal Framework for Executing Judgments That Cannot Be Fully Implemented

The supervisory function over judgment execution differs from judicial oversight (*judicial control*), which primarily emphasizes the exercise of judicial authority. Execution oversight is more administrative in nature, aimed at directing administrative officials to carry out court judgments in accordance with the authority vested in them under the executive function. In principle, Article 119 of Law No. 5 of 1986 on the State Administrative Court assigns the responsibility to the Chief Judge to supervise all final and binding court judgments. In practice, however, the form of supervision varies depending on the issues encountered by the parties, which may include:

- a. Judgments executed voluntarily;
- b. Judgments that cannot be executed;
- c. Judgments that cannot be fully executed;
- d. Judgments that are not executed.

This categorization of judgment execution outcomes reflects the practical challenges of administrative justice enforcement. However, the legal framework provides limited guidance on distinguishing between these categories, particularly between judgments that "cannot be

¹⁹ Paulus Effendi Lotulung, *Lintasan Sejarah dan Gerak Dinamika Peradilan Tata Usaha Negara*, (Jakarta: Salemba Humanika Publisher, 2013) p. 78-79.

²⁰ See Yos Johan Utama, *Membangun Peradilan...* p. 11. Yos Johan Utama asserts: "In the system offered by the Administrative Court, the implementation of Administrative Court Judgment emphasizes moral compliance and not legal compliance." This statement is based on the fact that the implementation of an Administrative Court Judgment is not placed in a system that culminates in or is supported by penetration, as is the case in civil and criminal courts. The enforcement of Administrative Court judgments is placed on the law awareness of administrative officials. No instrument can force the Defendant/Official to comply with and implement the Judgment."

executed" and those that "cannot be fully executed." This distinction is crucial because different legal consequences flow from each categorization. The absence of clear criteria for determining when a judgment falls into each category creates space for interpretive discretion that may disadvantage plaintiffs seeking remedies.

The supervisory authority of the Chief Judge in judgment execution represents an institutional compromise between judicial oversight and executive autonomy. While this authority acknowledges the need for continued judicial involvement beyond the issuance of judgments, its effectiveness is constrained by both conceptual and practical limitations. Conceptually, the supervisory role stops short of direct enforcement power, maintaining the separation between judicial determination and executive implementation. Practically, Chief Judges often lack the administrative resources and specialized expertise needed to effectively monitor execution across numerous cases with diverse technical requirements.

Strengthening the judgment execution supervision mechanism requires a more systematic and structured approach. While the limitations on the Chief Judge's authority in execution supervision are grounded in the doctrine of separation of powers, there remains room to enhance supervision effectiveness without violating this principle. This could include developing more detailed monitoring systems, periodic reporting on judgment execution status, and more structured coordination mechanisms between courts and administrative bodies. This approach can strengthen compliance with court judgments while still respecting executive autonomy in their implementation.

This study focuses on judgments that cannot be fully executed. According to the prevailing legal provisions, this form of execution only applies to civil service disputes. In cases where the court annuls a dismissal decision, the general principle is that the individual or civil servant must be reinstated to their original status and position (rehabilitation). However, when changing circumstances make it impossible for the individual to return to their previous position, they may request compensation in the form of a sum of money²¹.

²¹ Republic of Indonesia, *Explanation of Article 1 point 2 of Government Regulation No. 43 of 1991 concerning Compensation and Its Payment Procedures in Administrative Court*.

The resolution mechanism for judgments that cannot be fully implemented is regulated in Article 117, paragraph (1) of Law No. 5 of 1986 on the State Administrative Court, which reads:

In relation to the obligations as referred to in Article 97 paragraph (11), if the defendant is unable or unable to fully execute the Court judgment that has obtained permanent legal force due to changes in circumstances that occur after the Court judgment is rendered and/or obtains permanent legal force, the defendant must notify the Chief Judge as referred to in Article 116 paragraph (1) and the plaintiff.

Rehabilitation constitutes the restoration of the plaintiff's rights, position, dignity, and status as a civil servant to the state they were in prior to the contested decision, including all derivative entitlements arising from that position and status. If the right in question relates to a specific position and the position has already been filled at the time the judgment becomes *inkracht* (final and binding), the plaintiff may be appointed to another position of equivalent rank. If that is not possible, the individual shall be reappointed at the first available opportunity to a position of equal status, or alternatively, the provisions under Article 117 of Law No. 5 of 1986 may be applied²².

In cases where technical obstacles hinder rehabilitation, the defendant must actively communicate these difficulties to both the court and the plaintiff. The mechanism offered in such cases is the payment of a monetary amount or other form of compensation as agreed upon. Compensation refers to the defendant's payment of a sum of money to the plaintiff due to the defendant's inability to fully execute a civil service-related court judgment.

Government Regulation No. 43 of 1991 on Compensation and Procedures for Its Execution in the State Administrative Court does not set a strict upper limit on the amount of compensation, so long as both parties agree upon it. In the absence of such an agreement, the regulation provides a default range of between IDR 100,000 to IDR 2,000,000. In principle, Government Regulation No. 43 of 1991 also affords flexibility to the defendant, allowing compensation payments to be deferred to the following fiscal year if the current year's budget cannot accommodate the payment.

²² Republic of Indonesia, *Explanation of Article 121 paragraph (2) of Law Number 5 of 1986 concerning the Administrative Court*.

Dynamics: Judgments That Cannot Be Fully Executed

a. Variations of Cases Involving Judgments That Cannot Be Fully Executed

The legal consequences of determining compensation become particularly sensitive when they intersect with state finances. As such, defendants respond with a high degree of caution. In practice, variations exist in how defendants respond to compensation requests. These include:

1. Agreement on the Amount of Compensation between Plaintiff and Defendant, Followed by Judicial Decision and Execution.

In this case, the obstacle to rehabilitation was that when the judgment became final and binding, the plaintiff had already retired from their position as a dismissed civil servant. The plaintiff requested compensation in the amount of IDR 843,521,268, while the defendant was only willing to offer IDR 127,083,343. Outside the courtroom, the parties engaged in deliberation and presented a draft settlement agreement in which the defendant agreed to pay IDR 247,105,248, an amount reduced by IDR 67,000,000 for damages already paid. After summoning both parties and hearing their statements, the Chief Judge of the Jakarta Administrative Court issued a judicial order setting the compensation amount at IDR 247,105,248.²³

2. No Agreement on Compensation Amount; the Chief Judge Determines Compensation Unilaterally, and the Order is Executed.

In this instance, the obstacle to rehabilitation was that the defendant could not reinstate the plaintiff to a position equivalent to Echelon IIb, as the plaintiff had already retired²⁴.

²³ Judgment of Jakarta Administrative Court Number 099/G.TUN/1996/PTUN-Jkt, Mar. 6, 1997 *jo*. Judgment of Jakarta Administrative High Court Number 48/B/1997/PT.TUN.JKT, Jul. 4, 1997 *jo*. Supreme Court Judgment Number 157 K/TUN/1998, May 3, 2001.

²⁴ Judgment of Jakarta Administrative Court Number 294/G/ 2018/PTUN-JKT, May 18, 2019 *jo*. Judgment of Jakarta Administrative High Court Number 226/B/2019/PT.TUN-JKT, Sep. 12, 2019 *jo*. Supreme Court Judgment Number 90 K/TUN/2020, March 19, 2020.

The plaintiff sought compensation, including both material and immaterial damages, amounting to IDR 5,000,000,000 (five billion rupiah), while the defendant was only willing to pay a maximum of IDR 2,000,000 (two million rupiah), in accordance with Government Regulation No. 43 of 1991. Since no agreement was reached, the Chief Judge of the Jakarta Administrative Court independently calculated and ordered the defendant/execution respondent to pay the plaintiff compensation in the amount of IDR 80,665,476 (eighty million six hundred sixty-five thousand four hundred seventy-six rupiah)²⁵.

3. No Agreement Reached; the Chief Judge Determines Compensation Unilaterally, and the Order Is Challenged before the Supreme Court.

In this case, the obstacle to rehabilitation was that the defendant could not reinstate the plaintiff to their former position as Vice Rector of Syarif Hidayatullah State Islamic University. By the time the judgment became final and binding, the plaintiff had already retired²⁶. The plaintiff calculated the amount of compensation due to be IDR 480,000,000. The defendant maintained that compensation should fall within the statutory range of IDR 100,000 to IDR 2,000,000, in accordance with Government Regulation No. 43 of 1991. As the parties failed to agree on the amount, the Chief Judge of the Serang Administrative Court determined the compensation amount unilaterally and issued an order requiring the defendant/execution respondent to pay IDR 180,000,000 (one hundred eighty million rupiah) to the plaintiff/execution petitioner²⁷.

²⁵ Decision of the Chief Judge of Jakarta Administrative Court Number 294/G/2018/PTUN-Jkt, October 11, 2021.

²⁶ Judgement of Serang Administrative Court Number 31/G/2021/PTUN.SRG, Sep. 21, 2021 *jo*. Judgment of Jakarta Administrative High Court Number: 252/B/2021/PT.TUN.JKT, Dec. 2, 2021 *jo*. Judgment of the Supreme Court of the Republic of Indonesia Number: 231 K/TUN/2022, April 12, 2022 *jo*. Judgment Number: 33 PK/TUN/2023, March 21, 2023.

²⁷ Decision of the Chief judge of Serang Administrative Court Number 31/PEN-EKS/2021/PTUN.SRG, September 5, 2023.

The defendant subsequently filed an objection to the Supreme Court, requesting a reassessment of the compensation in accordance with Government Regulation No. 43 of 1991. The Supreme Court rejected the objection and upheld the Serang Administrative Court's order, requiring the payment of IDR 180,000,000²⁸.

b. Assessing the Validity of Government Regulation No. 43 of 1991

The executive branch of government may issue regulations based on a mandate or delegation of authority (transfer of power) from legislation, either explicitly or implicitly, to enact implementing regulations (delegation of rule-making power). Regulations issued by the government are subordinate in status and may not conflict with higher laws. This principle ensures that statutes enacted by the legislature retain superior normative force. Accordingly, the formulation of regulations must adhere to proper procedures to ensure that their substance genuinely reflects the actual needs of society²⁹.

Legal validity refers to the concept of identifying legal norms within a given legal system. This concept encompasses the existence of a norm as a legal norm, its membership in a specific legal order, and its normative binding force. A legal system loses its validity when the norms within it become entirely unenforceable³⁰.

Government Regulation No. 43 of 1991 was issued as an implementing regulation for Article 120 paragraph (3) in conjunction with Article 97 paragraph (10) and Article 117 of Law No. 5 of 1986. The concepts of damages and compensation are regulated together, even though Article 117, *expressis verbis*, does

²⁸ Decision of the Supreme Court Number 1/Pen.Eks/2024, dated September 11, 2024.

²⁹ Umar Dani, "Irregularity Protection of Citizens' Constitutional Rights to the Administrative Silence," *Jurnal Konstitusi* 20, no. 3 (2023), doi:10.31078/jk2035.

³⁰ Ricca Anggraeni and Indah Mutiara Sari, "MENELISIK TERTIB HUKUM PERATURAN PEMERINTAH PENGANTI UNDANG-UNDANG MELALUI VALIDITAS SUATU NORMA HUKUM," *CREPIDO* 2, no. 1 (2020), doi:10.14710/crepido.2.1.35-45.

not mandate further regulatory elaboration, nor does it authorize any limitation on the amount of compensation. The legislature entrusted both the plaintiff and the defendant with full discretion to determine the amount of compensation based on the actual losses suffered by the plaintiff and the defendant's financial capacity. This equivalence arises primarily because both remedies are paid from public funds. The key distinction between the two lies in the timing of their application: damages are awarded during judicial proceedings and therefore fall within the jurisdiction of the court (the judge), whereas compensation is determined during the execution phase and is the responsibility of the administrative agency.

The regulation of damages and compensation amounts falls under the government's discretionary authority (*open legal policy*). However, such discretion must be guided by appropriate benchmarks to prevent it from becoming arbitrary. One such approach is to apply the "*maximin*" strategy (choosing the best of various bad possibilities)³¹ to ensure that regulatory decisions do not deviate from principles of justice. A well-functioning bureaucracy is reflected in its ability to deliver public services, operate free from corruption, and maintain performance accountability. Likewise, good law is a law that protects citizens from arbitrary state action. The government must be able to account for every aspect of its administrative conduct, as there is no authority without accountability³². This aligns with the legal maxim *ubi jus ibi remedium* (where there is a right, there is a possibility to demand, obtain it or repair it when that right is violated).

The regulation of compensation limits is not fundamentally a matter of justice but rather one of legal certainty. At its core, compensation is a form of reward or remuneration³³. Referring to the legal basis for compensation as stated in Article 117 in

³¹ Muhammad Reza Baihaki, Fathudin Fathudin, and Ahmad Tholabi Kharlie, "Problematisasi Kebijakan Hukum Terbuka (Open Legal Policy) Masa Jabatan Hakim Konstitusi," *Jurnal Konstitusi* 17, no. 3 (2020), doi:10.31078/jk1739.

³² Umar Dani, "Irregularity Protection of Citizens'..." p. 452.

³³ Aswaruddin, Sri Muliyan, Nurul Zahara Bacin, Maulana Yontino, Lutfhia Farhana Putri Lubis, and Said Agil Ad Darain, "Kompensasi", *Jurnal Penelitian Pendidikan Indonesia*, vol. 1, no. 1 (2023), p. 58, <https://doi.org/10.62017/jppi.v1i1.98>.

conjunction with Article 121 of Law No. 5 of 1986, the amount of compensation is determined by mutual agreement between the parties, with the court's decision serving only as a fallback mechanism. Since compensation arises from the defendant's inability to reinstate the plaintiff's civil service rights, the amount should ideally correspond to the nature and variety of the lost entitlements. These entitlements, by nature, cannot be uniformly valued.

A deeper analysis of Government Regulation No. 43 of 1991 reveals several constitutional and administrative law tensions. From a normative hierarchy perspective, implementing regulations should elaborate rather than restrict statutory provisions. The original legislative intent in Law No. 5 of 1986 granted discretion to parties to determine compensation based on actual losses and institutional capacity. By imposing rigid monetary limits that have not been adjusted for inflation or economic changes over three decades, the regulation effectively narrows rather than implements the statutory mandate. This raises questions about its conformity with principles of delegated legislation, where implementing regulations derive their authority from and must remain consistent with their parent statutes.

Furthermore, the regulation's approach to compensation reflects a dated administrative law paradigm that prioritizes budgetary certainty over effective remedies. Modern administrative law increasingly recognizes that effective remedies are essential to meaningful rights protection and good governance. When remedies become symbolic rather than substantive, the deterrent effect of judicial review is undermined, potentially encouraging administrative bodies to make decisions with limited concern for legal consequences. The evolution of judicial practice away from applying the regulation's monetary limits can be understood as a recognition of this tension between formal compliance and effective remedy.

The constitutional dimension of this issue extends to questions of access to justice and effective legal protection. Indonesia's constitutional framework guarantees citizens' rights to legal certainty and equal treatment before the law. When compensation for unlawful administrative decisions becomes

nominal rather than restorative, it raises questions about whether citizens' constitutional right to effective judicial protection is being adequately fulfilled. This constitutional perspective provides additional grounds for reconsidering the continued applicability of compensation limits that have become disconnected from economic realities.

At present, the application of compensation in practice no longer adheres to Government Regulation No. 43 of 1991, as it is no longer aligned with the evolving needs of society. This adaptive judicial approach reflects what comparative administrative law scholars describe as courts' evolving role in bridging gaps between static regulations and dynamic social needs³⁴. Based on the cases studied, all rights and obligations concerning compensation are adjusted in accordance with changing circumstances. The sidelining of Government Regulation No. 43 of 1991 is justified by technological advancements and social developments, which render constant reliance on formal regulations impractical. As the adage goes, *het recht hinkt achter de feiten aan* (the law always lags behind the events it seeks to regulate).

In response, the Supreme Court issued Implementation Guidelines for the Supervision of Final and Binding Administrative Court Judgments, under Decree Number 01/KM.TUN/HK2.7/JUKLAK/VII/2024 dated July 2, 2024. The guidelines principally grant authority to the Chief Judge of the Administrative Court to facilitate an agreement on the amount of compensation between the plaintiff and the defendant. To support accurate calculation, the parties may engage the services of a professional appraiser to assess the value of the compensation.

c. Criteria for Court Judgments That Cannot Be Fully Executed

Procedural law is a primary factor contributing to issuing court judgments that cannot be fully executed. During the course of administrative dispute resolution, it is highly possible for circumstances to change, legal provisions to evolve, or the employment status of the plaintiff to shift. To prevent the issuance

³⁴ John S. Bell, "Comparative Administrative Law," in *Oxford Handbook of Comparative Law*, ed. Mathias Reimann and Reinhard Zimmermann (Oxford: Oxford University Press, 2019), p. 1305-1308.

of non-executable judgments in civil service disputes, a special procedural mechanism is required, one that synchronizes the time limits of dispute resolution with practical implementation needs.

The influence of lengthy handling procedures on civil service disputes is shown in the following table:

Table 1. Process of Handling Case No. 31/G/2021/PTUN.SRG

Dispute Resolution Time	
Dispute Object Issued	February 18, 2021
Lawsuit Filed	May 10, 2021
Serang Administrative Court Judgment	September 21, 2021
Appeal Judgment	December 2, 2021
Cassation Judgment	April 12, 2022
Final and Binding Judgment	June 14, 2022
Execution Request I	November 30, 2022
Judicial Review Judgment	March 21, 2023
Execution Request 2	July 24, 2023
Compensation Decision by Chief judge of Serang Administrative Court	September 5, 2023
Compensation Decision by Supreme Court	September 11, 2024

The time span from issuing the disputed administrative decision to *inkracht* (final and binding) cassation ruling was approximately 16 months. The execution phase, from *inkracht* to the Supreme Court's compensation decision, took about 27 months. In total, the plaintiff spent 43 months seeking to realize their rights. This timeline illustrates the inefficiency of the administrative court system in handling civil service disputes and highlights the high likelihood of issuing judgments that cannot be fully implemented.

Judgments that cannot be executed in full are typically marked by the defendant's inability to fulfill court-ordered obligations of rehabilitation. The key obstacles to rehabilitation include: first, the plaintiff's legal status no longer qualifies them for reinstatement,

whether due to retirement or other legal barriers; second, the plaintiff's former position has already been filled by another official; and third, structural changes within the institution.

The execution of judgment in case No. 31/G/2021/PTUN.SRG illustrates particularly complex dynamics. At the time the cassation judgment became *inkracht*, the defendant cited two reasons for non-compliance: first, the plaintiff's former position had been filled and the plaintiff had already been reassigned to a different role, which by regulation could not be held concurrently; and second, the defendant had filed a judicial review. Based on these two reasons, the defendant argued that execution of the judgment could result in a chaotic legal order within the institution's structure. During the post-judicial review execution phase, yet another issue arose: the minimum age requirement for occupying the disputed position was sixty, while the plaintiff had already surpassed that age.

Analysis of these cases reveals that structural and procedural obstacles are often systemic rather than case-specific. This pattern indicates the need for comprehensive reform in the execution mechanism of administrative court judgments, particularly in civil service disputes that are sensitive to changing circumstances. The problem is compounded by the disconnect between the timeframe of judicial proceedings and the dynamic nature of administrative organizations, creating a temporal gap during which circumstances inevitably change. This systemic challenge cannot be addressed through isolated case-by-case solutions but requires fundamental reconsideration of how rehabilitation is conceptualized and implemented in administrative justice.

A critical analysis of these patterns reveals that the obstacles to full execution often emerge from inherent temporal asymmetries in the administrative dispute resolution system. While administrative decisions take immediate effect, judicial review processes operate on significantly longer timelines. This asymmetry creates an institutional advantage for administrative bodies, as the passage of time during litigation frequently renders full rehabilitation impractical. The case examples demonstrate that this is not merely an incidental outcome but a structural feature of

the current system that systematically disadvantages plaintiffs in civil service disputes.

Moreover, the classification of obstacles to rehabilitation reveals a hierarchy of challenges. While legal status changes (such as retirement) and position filling represent relatively straightforward factual obstacles, organizational restructuring introduces more complex legal questions about equivalence and proportionality in rehabilitation. When organizational structures change, determining what constitutes an "equivalent position" becomes increasingly subjective, creating space for administrative bodies to claim that full rehabilitation is impossible even when alternative placements might be available. This ambiguity in determining equivalence further complicates the execution of court judgments and requires more precise legal standards to ensure that organizational changes do not become pretexts for avoiding rehabilitation obligations.

The execution of administrative court judgments in civil service disputes reveals the complexity of enforcement. The plaintiff's access to justice heavily depends on the procedural framework of the Administrative Court and the good faith of the defendant. Formal procedures, which serve as the legal basis for rehabilitation and compensation, may paradoxically obstruct the very justice they aim to provide. Even when compensation is ultimately awarded, delays caused by the defendant represent a denial of justice (justice delayed is justice denied).

d. Implementation of Compensation

Compensation and damages are two distinct legal concepts. Damages refer to a sum of money paid to an individual or legal entity, at the expense of the defendant, based on a court judgment awarding material restitution for losses suffered by the plaintiff. In such cases, the chief judge is not required to interpret or estimate the damages amount independently. In contrast, compensation is not recognized as part of the court's ruling; rather, it arises only when the defendant is unable to carry out rehabilitation. The method for determining the amount to be paid, or the form of compensation, is primarily based on agreement between the plaintiff and the defendant.

The responsibility to pay compensation or any other form of equivalent monetary value is not specifically regulated. Compensation payments typically follow the fiscal structure for damages, i.e., charged to the State Budget (*Anggaran Pendapatan dan Belanja Negara*) for central government agencies, the Regional Budget (*Anggaran Pendapatan dan Belanja Daerah*) for local government institutions, or borne by the internal financial resources of the relevant agency. Whether in the form of damages or compensation, the payment is intended to restore the material loss suffered by the plaintiff.

The amount of compensation often becomes a point of contention. Defendants tend to insist on applying the limits set by Government Regulation No. 43 of 1991. However, these fixed amounts are widely considered outdated and insufficient to restore the actual material losses suffered by plaintiffs. In practice, courts determine compensation based on the actual loss suffered, calculated in detail by the chief judge in accordance with the plaintiff's legal entitlements under applicable law. In line with this, Government Regulation No. 43 of 1991 implicitly encourages the parties to reach a mutual agreement. If no agreement is reached, the court will determine the amount after considering calculations submitted by both the plaintiff and the defendant.

A proper compensation calculation methodology becomes crucial for ensuring substantive justice for plaintiffs. When rehabilitation is no longer possible, compensation must be capable of proportionally restoring material losses. This calculation should not be based solely on basic salary but should also consider performance allowances, lost career opportunities, and other remuneration components associated with the disputed position. Moreover, comprehensive compensation should account for both tangible and intangible aspects of the loss, including professional reputation damage and career advancement opportunities that would have reasonably been available to the plaintiff. The compensation determination process should also incorporate economic indicators such as inflation rates and salary increases that have occurred since the issuance of the invalidated decision, ensuring that the final amount reflects current economic realities rather than historical values.

The judicial approach to compensation determination reveals a subtle but significant shift from strict statutory interpretation toward a more principled application of justice. This evolution reflects an implicit recognition that the statutory framework in Government Regulation No. 43 of 1991 has become disconnected from contemporary socio-economic realities. The court decisions analyzed in this study demonstrate that judges are increasingly willing to depart from the statutory limits when those limits would result in manifestly inadequate remedies. This judicial practice represents not a rejection of legal norms but rather an attempt to reconcile formal legal provisions with the substantive requirements of justice in changing circumstances.

This interpretative approach is particularly evident in cases where courts have explicitly acknowledged the temporal gap between the enactment of Government Regulation No. 43 of 1991 and contemporary compensation determinations. By referencing changes in remuneration systems and economic conditions over the intervening decades, courts are effectively applying a dynamic interpretation that seeks to maintain the underlying purpose of the regulation while adapting its application to current realities. This approach represents a form of purposive interpretation that prioritizes the compensatory function of remedies over strict adherence to outdated monetary limits.

Although Government Regulation No. 43 of 1991 is no longer used as the standard for determining compensation, few court orders explicitly explain the rationale for disregarding it. One notable exception is the ruling by the Chief Judge of the Serang Administrative Court in the Decision of the Chief Judge of Serang Administrative Court Number 31/PEN-EKS/2021/PTUN.SRG, which states:

The court deems it necessary to explain that the amount of money/compensation regulated in the provisions of Article 14 paragraph (1) of Government Regulation Number 43 of 1991 is no longer relevant to apply, with the argument that at the time the government regulation was enacted, performance-based remuneration had not yet been applied and the amount of allowance for the position of vice-rector within a period of approximately 32 years (1991-2023) has undergone several changes,

therefore the chief judge will determine the calculation of the amount of money/compensation in accordance the principles of fairness and reasonableness³⁵

The chief judge's reasoning for determining compensation must remain grounded in the rationale for which compensation is granted in the first place. Compensation arises from the defendant's failure to restore the plaintiff to their original legal position. The amount of compensation will inevitably vary from case to case and must reflect the rights lost due to the defendant's unlawful decision. These rights must then be restored through a fair compensation mechanism.

The compensation calculation begins from the date the court judgment becomes *inkracht* and extends through the remainder of the plaintiff's official appointment period as stated in their formal letter of appointment. The period from the issuance of the disputed administrative decision until the judgment becomes final is not included in the compensation calculation. This exclusion is based on the legal principle of *het vermoeden van rechtmatigheid* or *presumption justae causa* (the presumption of legal validity). Under this principle, administrative decisions are presumed to be lawful and enforceable until proven otherwise through legal proceedings.

Conclusion

While existing literature has focused on general execution challenges in administrative courts, this study is among the first to systematically analyze the specific phenomenon of non-fully executable judgments due to changed circumstances in Indonesian administrative law. The research findings demonstrate that the defendant/execution respondent is deemed unable to fully execute a court judgment in the Administrative Court when there are obstacles related to the obligation of rehabilitation in civil service disputes. Such obstacles include: first, the plaintiff's legal status no longer qualifies them for reinstatement to their original position; second, the plaintiff's former position has already been filled by another individual; and third, changes in the

³⁵ Decision of the Chief Judge of Serang Administrative Court Number 31/PEN-EKS/2021/PTUN.SRG, September 5, 2023.

organizational structure. In such cases, the plaintiff may request the defendant to pay a certain amount of money or other forms of compensation as a substitute for rehabilitation.

The implementation of compensation is based on actual losses suffered by the plaintiff as a result of a decision that has been declared invalid by the court. The legislature has fully entrusted both the plaintiff and the defendant with the discretion to determine the amount of compensation in accordance with the extent of the plaintiff's losses and the financial capacity of the defendant's institution. When no agreement can be reached between the plaintiff and the defendant, the Chief Judge of the Administrative Court is authorized to assess and determine the amount the defendant must pay fairly and reasonably, taking into account statutory regulations and the principles of propriety and appropriateness.

Revision of Government Regulation No. 43 of 1991 is necessary to accommodate current economic and social realities and enhance legal certainty in the execution of administrative court judgments. Furthermore, strengthening the judgment execution supervision mechanism by the Chief Judge requires more effective legal instruments, including the possibility of applying administrative sanctions against officials who fail to implement court judgments without legitimate reasons. The development of specialized procedural rules for civil service disputes, with expedited timelines and enhanced interim measures, could also significantly reduce the incidence of non-executable judgments.

This study makes several original contributions to Indonesian administrative law scholarship. First, it provides the first systematic categorization of obstacles that render administrative court judgments non-fully executable, moving beyond anecdotal observations to empirical classification. Second, it reveals an evolving judicial interpretative strategy that prioritizes substantive justice over rigid statutory compliance, particularly in compensation determination. Third, it demonstrates how courts develop adaptive mechanisms to address the temporal asymmetries inherent in administrative dispute resolution systems.

The findings of this study highlight an evolving judicial approach that prioritizes substantive justice over rigid formalism when confronting non-fully executable judgments. While courts have

demonstrated adaptability through interpretative strategies that bridge the gap between outdated regulations and contemporary needs, more systematic reforms are needed to address the structural causes of execution challenges. These include addressing the temporal asymmetries in administrative dispute resolution and clarifying standards for determining equivalent positions following organizational changes. Ultimately, bridging the gap between legal provisions and practical realities in administrative justice requires a balanced approach that respects both the principle of separation of powers and the right to effective judicial remedies.

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