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The Use of *Gijzeling* Against Individuals Disobeying Court Orders Qualifying as Contempt of Court

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ABSTRACT

In Indonesia, as a country of law, all legal subjects are required to comply with court decisions that have permanent legal force (inkracht van gewijsde). In civil law, decisions often involve the obligation to pay compensation, and the losing party must fulfill this obligation. However, the implementation of legal certainty can be difficult, and failure to comply with decisions can be considered as contempt of court, which can damage the reputation of the judicial institution and violate Article 216 of the Criminal Code. Although criminal sanctions are applied, the problem of implementing compensation has not been fully resolved. This study uses a normative method with a legislative and conceptual approach to address the problem of ignoring court decisions that have permanent legal force. The results of the study propose that such neglect can be considered as contempt of court and that the concept of "gijzeling" (forced detention) can be used as a bestuursdwang sanction to force the implementation of the decision. The researcher believes that the application of "gijzeling" will be more effective and a solution than criminal sanctions under Article 216 of the Criminal Code in resolving this problem.

1. Introduction

Law enforcement is an effort for seekers of justice (justiciable) through an institution known as the judiciary. In addition, law enforcement can also create or restore balance in society.[1] Conceptually the judicial power consists of the Supreme Court and the Constitutional Court.[2] The judiciary power under the Supreme Court encompasses general jurisdiction, religious jurisdiction, military jurisdiction, and administrative jurisdiction,

1 Denny Saputra, Andi Surya Perdana, and Hendrik Murbawan, "Peran Jaksa Dalam Sistem Peradilan Di Indonesia The Role of Prosecutors in the Justice System in Indonesia," *Halu Oleo Law Review* 6, No. 2 (2022): p. 218–237.

2 Saldi Isra, "Titik Singgung Wewenang Mahkamah Agung Dengan Mahkamah Konstitusi," *Jurnal Hukum dan Peradilan* 4, No. 1 (2015): p. 17.

each jurisdiction has absolute competence or authority to examine, adjudicate, and decide on a case based on the characteristics of its legal issues[3]. Meanwhile, the judiciary power under the Constitutional Court has the competence or authority to review laws against the 1945 Constitution, decide on disputes of state institution authority, decide on the dissolution of political parties, settle disputes about the results of general elections (See: Article 29 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power). The principle of law enforcement adopted in each competence or absolute authority of the judiciary institution is based on Pancasila and the 1945 Constitution which affirm that Indonesia is a state based on the rule of law (*rechtstaat*)[4].

The process of law enforcement in criminal, civil, religious, military, administrative, and constitutional matters is governed by procedural law derived from formal law. This is done in accordance with the principle of due process of law[5], ensuring that every legal effort reflects procedural justice so that the legal steps taken by law enforcement authorities and disputing parties result in substantive justice. The substantive justice sought for every justiciable ideally isn't about winning or losing (win-lose), as the disputing parties inherently have their respective rights that should be proportionally considered by the judge. Hence, the judge's consideration, encompassing the ratio decidendi, should naturally be based on the *ratio legis* derived from legal facts and bases discovered during the trial process. Ultimately, each party receives their rightful share according to proportionality and fairness through the court's decision or verdict, thereby achieving substantive justice. Therefore, the resolution for disputable issues should ideally result in a win-win situation rather than a win-lose scenario. Concerning disputes involving the interests of parties in private or civil matters as well as disputes in administrative or state affairs, such characteristics should be realized. This is because the characteristics of court

[3] The General Court examines, tries and decides criminal and civil cases. The Religious Courts examine, adjudicate and decide cases between people of the Islamic faith. Military Justice examines, tries and decides military crimes. The State Administrative Court examines, adjudicates, decides and resolves state administrative disputes (Vide: Article 25 of Law No. 48 of 2009 concerning Judicial Power).

[4] In a rule of law state, the presence of regulations regarding judicial institutions related to judicial power is to create an integrated justice system through law enforcement and justice based on Pancasila and the Constitution.

[5] Due process of law comes from the document Magna Charta 1215 which means a constitutional guarantee where no person can be deprived of life, liberty or property for arbitrary reasons (constitutional guarantee... that no person will be deprived of life, liberty or property for reasons that are arbitrary). Atip Latipulhayat, gave the opinion that due process of law is a constitutional guarantee that ensures a fair legal process that gives a person the opportunity to know about the process and have the opportunity to be heard to explain why their rights to life, liberty and property have been taken away or eliminated. Due process of law is a constitutional guarantee which confirms that the law is not enforced irrationally, arbitrarily, or without certainty. In Atip Latipulhayat, "Editorial: Due Process of Law," *Padjajaran Jurnal Ilmu Hukum* 2, No. 2 (2017).

verdicts in civil procedure law and administrative procedure law possess declaratory[6], constitutive[7], and condemnatory[8] features.

One of the phenomena that renders law enforcement processes interminable, contradicting the principle of *litis finiri oportet* (the discourse between justice and legal certainty) and the principle of swift, concise, and cost-effective adjudication[9] (See: Article 2 paragraph (4) of Law No. 48 of 2009 concerning Judicial Power), seems to remain unrealized in the recent case involving Muhammad Guruh Soekarno Putra as the Defendant (losing party) and Susi Angkawijaya as the Plaintiff (winning party), which has stirred controversy[10]. This is due to the fact that, based on the decisions of the District Court in the initial trial No: 67/Pdt.G/2014/PN.Jkt.Sel, coupled with the decisions of the High Court in the appeal process No: 294/PDT/2015/PT DKI, and the decision of the Supreme Court at the cassation level No: 515 K/Pdt/2016, all had obtained legal finality (*inkraht van gewijsde*). However, during the execution attempt to vacate the disputed property by the court's enforcement officer, Guruh's supporters obstructed it, resulting in the failure to carry out the eviction process.

Another case in the dispute of election results involving Sugianto Sabran and Eko Soemarno (Candidate Pair No. 1) as the Plaintiffs (winning party) against the Minister of Home Affairs as the Defendant (losing party), based on the Administrative Court's decision at the first instance No: 153/G/2011/PTUN-Jkt and the Supreme Court's decision in the cassation level No: 452 K/TUN/2012, revolves around the Minister of Home Affairs Decree No: 131.62-584 and No: 131.62-585 as the administrative decisions regarding the appointment of the Regent and Deputy Regent of Kotawaringin Barat, Central Kalimantan Province, based on the Constitutional Court Decision No: 45/PHPU.D-VIII/2010. This case is unique because the appointment of the Regent and Deputy Regent (Candidate Pair No. 2) was based on the aforementioned Constitutional Court Decision.[11] However, during the proceedings, it was discovered that false testimony had been presented by witnesses brought in by Ujang Iskandar and Bambang Purwanto (Candidate Pair No. 2). In a criminal case trial at the Central Jakarta District Court under Case Register No:

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6 A decision whose ruling states or confirms a situation that is valid according to law alone. An example states the validity of the legal relationship between the parties.

7 A decision whose ruling creates a legal situation, either negating or creating a new legal situation. For example, stating that there is an act of breach of contract or an unlawful act that has occurred.

8 A decision in which the ruling contains a sentence for one of the parties involved in the case. For example, ordering certain parties to carry out certain legal actions (paying compensation, fines, or interest).

9 General explanation in Article 2 paragraph (4) of Law No. 48 of 2009 concerning Judicial Power. What is meant by "simple" is that the examination and resolution of cases is carried out in an efficient and effective manner. What is meant by "low costs" are case costs that can be afforded by the public. However, the principles of simplicity, speed and low costs in examining and resolving cases in court do not exclude thoroughness and accuracy in seeking truth and justice.

10 Jessi Carina Dzaky Nurcahyo, "Tunda Eksekusi Rumah Guruh Soekarnputra, PN Jaksel: Lokasi 'Dijaga' Massa, Tidak Ada Polisi Yang Mengawal," *Kompas.Com*, 2023.

11 Constitutional Court Decision No. 45/PHPU.D-VIII/2010 is a dispute over election results between Ujang Iskandar and Bambang Purwanto (Paslon No. 2) with 55,281 votes against Sugianto Sabran and Eko Sumarno (Paslon No. 1) with 67,199 votes. This decision declared Candidate Pair 1 the winner because Candidate Pair 2 was proven to have committed money politics.

2197/Pid.B.2010/PN.JKT.PST, it was proven that the witnesses presented in the Constitutional Court's trial had provided false testimony and were convicted to 5 months in prison. Consequently, in the Administrative Court reviewing the contested administrative decision issued by the Minister of Home Affairs, it was declared that there were legal deficiencies both in terms of substance and procedure. Based on this legal rationale, the lawsuit filed by Sugianto Sabran and Eko Soemarno was found in their favor at the initial instance and upheld in the cassation level by the Supreme Court, declaring the Minister of Home Affairs as the defendant legally deficient. As a result, the administrative decision related to the appointment of Candidate Pair No. 2 was declared void and revoked. However, despite the court's order, the Minister of Home Affairs neglected to implement it, and as a result, Candidate Pair No. 2, Ujang Iskandar, and Bambang Purwanto, were still inaugurated as the Regent and Deputy Regent of Kotawaringin Barat, Central Kalimantan Province, for the 2011-2016 period.

The implementation of court judgments in criminal cases is carried out by prosecutors, in civil cases by court clerks, and court bailiffs under the leadership of the Chief Judge. The Mechanism of Application and Execution of Real Execution based on the Director General of the General Court Administration's Decree No. 40/DJU/SK/HM.02.3/1/2019 concerning Execution Guidelines at the District Court includes the following steps:

1. The petitioner submits an Execution Request;
2. The court clerk conducts an assessment and creates an Execution Assessment Summary for the petitioner;
3. The court informs the petitioner of the results of the Execution Assessment;
4. For Execution Requests that can be executed, the court issues a Decree for Execution Proceedings (SKUM);
5. The petitioner makes payment for the execution case fee deposit within a maximum of 3 working days since the issuance of SKUM;
6. The Chief Judge issues a Warning Decree and instructs the Clerk / Court Bailiff to summon the respondent within 7 days after the summary is made;
7. Execution of the Warning: a) Conducted by the Chief Judge within a maximum of 30 days in an incidental hearing since the Execution Request. b) If the respondent is absent without a valid reason, the execution process may proceed without an incidental hearing, unless deemed necessary to summon them again;
8. The Chief Judge warns the execution respondent to voluntarily comply with the judgment within 5 days after the warning is read;
9. Execution Implementation: a) In voluntary execution, 8 days after the Warning, the petitioner must report to the Court to create an Execution Report and a Handover Report. b) If voluntary execution is not possible, within 8 days of the Warning, the Chief Judge may issue a Seizure Decree if no previous seizure of assets has occurred, preceded by an assessment;
10. The Chief Judge sets the date for the eviction after coordination with law enforcement;

11. Execution is carried out with consideration for humanity and justice. Once completed, on the same day, it is promptly handed over to the petitioner or their authorized representative.

When observing the execution procedure above, an issue arises when the execution respondent, after 8 days from the voluntary execution warning, refuses to adhere to the court's decision. In such a scenario, the execution applicant fails to place a security seizure on the respondent's property and lacks knowledge of the specific assets of the execution respondent subject to potential seizure. Consequently, it appears that the court's decision in this case becomes a mere "paper decree", as the respondent fails to comply, rendering the decision non-executable (*inkcraht van gewijsde*). According to Yahya Harahap[12], issues surrounding non-executable judgments include:

1. Lack of assets belonging to the execution respondent;
2. Declaratory nature of the judgment;
3. Execution objects held by third parties;
4. Difficulty executing against lessees;
5. Objects intended for execution pledged to third parties;
6. Unclear boundaries of the land intended for execution;
7. Potential change in land status to state ownership;
8. Objects intended for execution located overseas;
9. Conflicting judgments;
10. Execution against jointly owned assets.

Based on the explanation above, the voluntary non-compliance of a court decision by the execution respondent, or its non-executability for any reason, constitutes an act that undermines the dignity of the judiciary as the legal enforcement institution deemed to possess legal supremacy in a rule of law state. This perception represents an inevitable phenomenon where the normative neglect of court decisions within the current civil law system we adhere to is not yet seriously regulated. Notably, there is no specific regulation governing contempt of court or explicitly qualifying non-compliance with court decisions as a criminal act. The article that might be associated with this matter is Article 216 of the Indonesian Criminal Code (KUHP). The National Legal Development Agency[13] translates Article 216 paragraph (1) of the KUHP as follows: "*Anyone who intentionally disobeys orders or requests made according to the law by an official tasked with overseeing something, or by an official in the performance of their duties, as well as those authorized to investigate or examine criminal acts; also those who intentionally obstruct or impede actions to enforce legal provisions carried out by any such official, shall be punishable with imprisonment for up to four months and two weeks or a fine of up to nine thousand Indonesian Rupiah*".

The author argues that the provision in this article remains insufficiently specific to be applied to the defiance of court decisions. This is because the phrase "official in the

[12] M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata* (Jakarta: Sinar Grafika, 2009).
[13] Tim Penerjemah BPHN, *Kitab Undang-Undang Hukum Pidana* (Jakarta: Sinar Harapan, 1983).

performance of their duties" does not explicitly clarify the judiciary or judges[14]. Furthermore, the threat of punishment, being "imprisonment for up to four months and two weeks," constitutes a criminal sanction in a category considered not serious enough, considering that such action should be categorized as endangering the dignity of the judicial institution. Therefore, even if criminal sanctions are applied as an *ultimum remedium*, the threat of imprisonment should clearly and decisively regulate actions classified as contempt of court.

The existence of the judiciary institution overseen by the Supreme Court, as stipulated in the UUD NRI 1945 and Law No. 48 of 2009 concerning Judicial Authority, ensures that courts at the District Court, High Court, and Supreme Court levels possess independence and autonomy in adjudicating legal cases. Normatively, judges cannot be intervened by anyone, as they not only represent a divine presence in the world to achieve justice through judicial processes but also hold the authority to render verdicts or judgments based on evidence, legal facts, legal grounds, and the judge's conviction. Although the aspect of a judge's conviction entails subjectivity, judges are expected, by their oath and moral standing, to exercise objective judgment forming the basis of their decision-making. Objectivity can be measured based on legal considerations through the ratio decidendi, which holds the *ratio legis* as legal argumentation subject to constitutional review by higher judges in appellate courts in case of appeals and by Supreme Court judges in case of cassation at the Supreme Court level. Therefore, when a court decision has obtained legal force (*inkcraht van gewijsde*), that decision should rightfully be respected and fully implemented by the disputing parties, particularly the party mandated (execution respondent) to undertake specific legal actions based on the aforementioned decision. It becomes ironic when there is a disregard for the law concerning the aforementioned decision, seemingly negating the spirit of a rule of law state, where the judiciary stands as the embodiment of legal supremacy that must be adhered to by everyone without exception.

The weakness in regulations to uphold the dignity and nobility of the judiciary is presumed to be due to the lack of instruments or juridical foundations that accommodate the issue of disregarding court decisions as "serious contempt" toward judges, especially court orders (judgments) in the context of civil law or administrative matters. This appears distinct when compared to regulations concerning insult against the Head of State/President as "serious contempt," which have been accommodated in both the old and new Indonesian Penal Codes (KUHP). It must be acknowledged that in our predominantly civil law system, there is limited specific regulation regarding contempt of court as an urgent matter. This contrasts with common law systems, where contempt of court is treated as a serious offense and, therefore, is regulated clearly and decisively.

[14] Legal discovery *(rechtsvinding)* is needed using the legal reasoning method *(rechtsverfijnning),* namely narrowing the meaning related to the phrase "officials based on their duties" in this context are judicial institutions and judges as officials who have the duty to carry out verdicts/decisions. "Thus, it can be interpreted that whoever deliberately does not obey the judge's orders based on the verdict/decision, will be threatened with imprisonment..."

Based on this background, there needs to be an in-depth study of the classification of contempt of court in the civil law system in Indonesia in terms of ignoring legally binding court decisions (*inkcraht van gewijsde*). In addition, there needs to be research on the form of effective sanctions for individuals who ignore legally binding court decisions (*inkcraht van gewijsde*).

2. Method

This research utilizes a normative research method with the objective of identifying legal rules, principles, and legal experts' views as responses to the encountered legal issues. The analytical framework of this research employs both the statutory approach and the conceptual approach based on Law No. 12 of 2015 concerning ICCPR, Law No. 1 of 2021 concerning Criminal Code, Law No. 48 of 2009 concerning Judicial Authority, Law No. 30 of 2014 concerning Government Administration, Law No. 6 of 2023 concerning Job Creation, Government Regulation No. 137 of 2000, Government Regulation No. 28 of 2022 concerning State Receivables Management by the State Receivables Management Committee, and Supreme Court Regulation No 1 of 2000. These regulations serve as the basis for analysis and legal grounds in implementing the use of Body Coercion (*Gijzelling*) as a government enforcement instrument (*bestuursdwang*) that can be utilized as a sanction for disregarding court decisions that undermine the dignity of judges and the judiciary. Such actions can be deemed as contempt of court, constituting an act that insults the judiciary or judges as case adjudicators. The conceptual approach is based on the use of government enforcement instruments (*bestuursdwang*) as the foundation for imposing sanctions without going through a court decision (VONIS), but rather utilizing administrative decisions (KTUN) as tangible actions (*feitelijke handeling*). This research analyzes the realization of legal supremacy in a Rule of Law state (*rechtstaa*t) as an urgent matter through court decisions categorized as non-executable to be implemented, ensuring the fulfillment of rights for the execution applicant as seekers of justice (*justiciabelen*) in Indonesia. This research employs the analytical framework of administrative law enforcement theory in relation to the principle of *in cau davenenum* and human rights protection, which must begin with the fulfillment of fundamental obligations. This ensures that the application of administrative sanctions, such as *gijzelling*, can be implemented effectively and in accordance with the ICCPR, thereby creating a judicial system that is swift, simple, and cost-effective.

3. Result and Discussion

The history of Contempt of Court originates within the Common Law system, particularly in England and the United States. Initially, contempt or Contempt of Court was associated with directly opposing the orders of the king or their authority[15]. In England, the doctrine of "pure streams of justice" was utilized as the foundation for the implementation of Contempt of Court in 1742. In 1981, England underwent a reform by enacting the

[15] Patrick Keyzer dan William Shaw, *Contempt of Court* (Australia: Media Commentaries Law, 2004).

Contempt of Court Act 1981. Meanwhile, in the United States, Contempt of Court was first regulated in 1789. The aim of this regulation is to ensure the judicial process operates without interference from any party, including those involved in legal proceedings, mass media, and court officials.[16]

The term "Contempt of Court" is derived from "contempt", meaning violation, disdain, or disrespect, and "court", signifying the judiciary. In terminological context, Contempt of Court refers to the endeavor to violate, demean, or undermine the court. Black's Law Dictionary[17] defines Contempt of Court as "any action intended to hinder or obstruct the court in administering justice, potentially reducing its authority or dignity, impeding the legal process, or when an individual under the court's authority as a party in a proceeding intentionally disobeys its lawful order or fails to fulfill their commitment".

As per the general explanation in Law No. 14 of 1985 regarding the Supreme Court, Contempt of Court is defined as "*actions, behaviors, attitudes, or expressions that diminish or harm the credibility, dignity, and honor of the judicial body, aiming to create the best environment for law and justice based on Pancasila*". Experts like Oemar Seno Adji[18], Seno depict Contempt of Court as actions or omissions substantially disrupting or obstructing the judicial process in a particular case. Meanwhile, Muladi argues that "court" in Contempt of Court refers to the judicial body established by law to exercise judicial power, distinct from legislative, executive, and judicial powers. Based on this definition, in brief, Contempt of Court constitutes both active and passive behaviors perceived as demeaning or disrupting the dignity of the court, both within and outside the courtroom.[19] Contempt of court is an important aspect of the justice system that helps maintain order and fairness in the legal process, and ensures that all parties comply with court orders and do not interfere with the course of justice. Therefore, further discussion is needed as follows.

3.1. The Urgency of Respecting Final and Binding Court Decisions

The legally binding court decision (*res judicata*) represents a judicial order that must be universally executed by all subjects under the law, leaving no justifiable grounds for non-compliance.[20] However, in practice, such decisions often remain confined to written records without serious legal repercussions or sanctions for those who intentionally or negligently disregard them. This practice serves as a gateway to the erosion of legal authority, resulting in the loss of legal certainty in Indonesia. Consequently, the principle of *fiat justitia ruat coelum* (let justice be done though the heavens fall) becomes an undeniable reality.[21] Indonesia's philosophy as a *Rechtsstaat* (Rule of Law) risks

16 Nico Keyzer, *Contempt of Court, Bahan Ceramah Di BPHN*, 2007.
17 Bryan A. Garner, *Black's Law Dictionary*, 10th editi. (United State of America: Thomson Reuters, 2014).
18 Oemar Seno Adji, *Contempt Of Court Suatu Pemikiran* (Jakarta, 1986).
19 Deni Niswansyah, "Contempt Of Court Dalam Sistem Hukum Peradilan Di Indonesia" (Universitas Airlangga, 2020).
20 Evelyn Lumentut, "Suatu Tinjauan Terhadap Putusan Pengadilan Berkekuatan Hukum Tetap," *Lex Administratum* 10, No. 1 (2022): p. 151–160.
21 Aturkian Laia and Purwanto, "Kebenaran Dan Keadilan Hukum," *Jurnal Panah Keadilan* 2, No. 1 (2023): p. 1–14.

transformation into a "barbaric state" due to law enforcement institutions lacking material legitimacy to uphold justice based on legally binding court decisions. This isn't merely speculative, given the absence of specific legal norms addressing the act of disregarding court decisions as an offense tantamount to contempt of court. Even Law No. 1 of 2023 on the Criminal Code focuses solely on "Criminal Acts Against Judicial Processes" in Chapter VI Articles 278-293, covering misleading judicial proceedings, disruption or obstruction of judicial processes, and damage to court buildings, courtrooms, and equipment. The new Criminal Code does not encompass the behavior of neglecting court judgments as a criminal offense.

The Supreme Court, as the guardian of judicial power based on the Constitution and Pancasila, with reference to Article 3 of Law No. 48 of 2009 on Judicial Power, appears to have failed in realizing judicial independence (upholding the dignity of the institution). There is no specific legal provision within the legislation to regulate the mandates stipulated in Article 3(3), which states, "Anyone who intentionally violates the provisions regarding interference in judicial affairs by parties outside the judicial authority is prohibited and will be punished according to the provisions of the legislation." Since 2002, there has been no specific regulation regarding contempt of court in the hierarchy of legislation in Indonesia, even with the creation of academic papers by the Research and Development Agency of the Supreme Court on contempt of court, and this remains unchanged up to the present (2024). The regulation is expected to be incorporated into the new Criminal Code, which will come into effect in 2026.

This highlights the current absence of legal regulations (legal vacuum) governing actions and behaviors that demean the dignity of the judicial institution, considering such actions as prohibited with legal consequences (sanctions). Consequently, the sanctity of the judicial institution is not held in high regard (underestimated) by those seeking justice. Such a situation underscores the urgency of establishing specific regulations regarding what actions qualify as contempt of court. This is crucial to ensure that in the future, the dignity of the judiciary attains credibility and becomes a true haven for seeking justice. Legal norms will be cultivated through regulations that compel the community to adopt order and discipline. Thus, there is a need for social engineering to transform negative behaviors into positive ones. In this way, the legal substance (juridical foundation) becomes the basis for the cultural and structural transformation of law enforcement authorities in Indonesia.

Regarding to the principle of "*litis finiri opertet*", which emphasizes that the judicial process must have an end, and the principle of swift, concise, and cost-effective justice, the treatment of disregarding court decisions deemed non-executable should prompt the government to play an active, responsive, and solution-oriented role in addressing this issue.[22] This should be done without intending to overlook the legal vacuum concerning

[22] Theodoron BV Runtuwene, "Kajian Yuridis Atas Putusan Mahkamah Konstitusi Nomor 34/Puu-Xi/2013 Dan Surat Edaran Mahkamah Agung Nomor 7 Tahun 2014 Ditinjau Dari Keadilan Dan Kepastian Hukum Terhadap Peninjauan Kembali," *Lex Administratum* 3, No. 3 (2015): p. 5–11.

contempt of court as an open legal policy for lawmakers. Referring to the constitutional mandate in Article 1 paragraph (3) regarding the Rule of Law, the realization of legal supremacy is not inherently the sole responsibility of the judicial institution (judiciary). This can be evidenced by the existence of law enforcement institutions such as the Police, Public Prosecutors, the Corruption Eradication Commission (KPK), and/or the Ministry of Law and Human Rights, which also play roles in law enforcement within the state structure as executive and pseudo-judicial organs. As a Unitary State of the Republic of Indonesia, in addition to decentralization[23] and deconcentration[24], the division of powers as a concept of *trias politica* exists to achieve checks and balances[25]. It cannot be interpreted that this division of powers serves as a transfer of responsibility solely to the judicial institution (judiciary) in achieving justice. In reality, every institution in this country also has a role and responsibility to realize the goal of social justice for the entire Indonesian population, as stipulated in the fifth principle of Pancasila.

This discussion emphasizes that legal justice is inseparable from social justice.[26] Thus, each existing state institution can play a role and contribute to realizing legal justice as part of social justice without exceeding their authorities based on legislation and the principles of good governance. It is evident that the executive's interest in ensuring investment certainty to achieve ease of doing business has led the government, through the legal instrument of the Omnibus Law on Job Creation (UU Cipta Kerja), to utilize administrative sanctions, including government coercion in certain cases. This example represents an innovative and effective legal breakthrough that does not contradict the principle of the presumption of innocence as regulated in Article 8 paragraph (1) of the Judicial Power Law.

Another example can be found in Article 1 number 15 in jo Article 58 regarding Forced Detention (*Gijzelling*) as a form of government coercion (*bestuurdwang*) categorized as an administrative sanction without going through a court decision. This provision is regulated in Government Regulation No. 28 of 2022 concerning the Management of State Receivables by the State Receivables Committee. By employing the concept of government coercion (*bestuurdwang*) in the realm of administrative law to address legal issues related to the lack of regulations regarding the neglect of court decisions, it should not be considered taboo in achieving a dignified judicial institution to preserve the honor and authority of judges. This way, the supremacy of the law in a constitutional state is not just a slogan but a tangible reality, ultimately ensuring that justice is served fairly (ex aequo et bono) for all litigants. It instills confidence in potential investors that Indonesia is a country with a

[23] Andi Pangerang Moenta and Syafa'at Anugrah Pradana, *Pokok-Pokok Hukum Pemerintahan Daerah* (Jakarta: RajaGrafindo Persada, 2018).
[24] Bagir Manan, *Menyongsong Fajar Otonomi Daerah* (Yogyakarta: Pusat Studi Hukum UII, 2001).
[25] Hanif Fudin, "Aktualisasi Check and Balances Lembaga Negara: Antara Mejelis Permusyawaratan Rakyat Dan Mahkamah Konstitusi," *Jurnal Konstitusi* 19, No. 1 (2022): p. 207.
[26] Ahmad Fadlil Sumadi, "Hukum Dan Keadilan Sosial Dalam Perspektif Hukum Ketatanegaraan Law and Social Justice in Constitutional Law Perspective," *Jurnal Konstitusi* 12, No. 4 (2016): p. 853–854.

credible legal system, fostering rapid growth in the investment climate similar to developed nations known for their trusted legal enforcement.

3.2. Types of Actions that Could Be Considered Contempt of Court

To establish the supremacy of law, it may be necessary to enact specific regulations in the legal framework that classify actions deemed as contempt of court. Currently, in Indonesia, the regulation of behaviors considered as contempt of court only refers to the general explanations of the Supreme Court Law that are no longer in force and the old Criminal Code (KUHP), regulated in Articles 207, 210, 212, 214, 217, 218, 221, 223, 224, 231, 232, 235, 242, 310, 314, 316, 317, 420, and 522.[27] No specific procedural law is related to implementing substantive law governing such actions. Therefore, actions classified as contempt of court become general criminal offenses and follow the criminal procedural legal process as regulated in Law No. 8 of 1981 (Criminal Procedure Code/KUHAP). Even though contempt of court in Indonesia has not been classified as a severe criminal offense, there is at least a need for specific procedural and substantive laws to enforce the law against such actions.[28] This is crucial, considering that the absence of particular regulations has the potential to undermine the dignity of judicial institutions and the supremacy of law as the highest commander in the Rule of Law State. The Supreme Court, as the center and guardian of legal supremacy in Indonesia, overseeing the District Courts, Administrative Courts, Military Courts, and Religious Courts, should be sanctified and positioned as a supreme institution consistent with its name. However, referring to the new Criminal Code (Law No. 1 of 2023) which will come into effect in 2026, as explained in Article 624, the regulation and classification of behaviors categorized as contempt of court are outlined in Chapter VI concerning Criminal Offenses Against Judicial Processes. Section I addresses Judicial Deception, Section II deals with Disturbing and Obstructing Judicial Processes, and Section III regulates the Destruction of Buildings, Courtrooms, and Court Equipment.

In Section I, there is one provision, namely Article 278, which regulates, among other things:

In Article 278, it is determined as follows:

a. *"Falsifying, creating, or presenting false evidence for use in judicial proceedings;*
b. *Directing a witness to provide false testimony in court;*
c. *Altering, damaging, hiding, eliminating, or destroying evidence;*
d. *Altering, damaging, hiding, eliminating, or destroying items, tools, or means used to commit a crime or that are the object of a crime, or results that can serve as physical evidence of the commission of a crime, or removing them from examination conducted by the authorized official after the crime has occurred; or*
e. *Presenting oneself as if they were the perpetrator of a crime, thereby undergoing criminal judicial proceedings*".

[27] Naskah Akademik, *Penelitian Contempt Of Court 2002* (Jakarta-Indonesia, 2002).
[28] Niswansyah, "Contempt Of Court Dalam Sistem Hukum Peradilan Di Indonesia."

In Section II, there are 14 provisions, namely Article 279-292, which regulates, among other things:

In Article 279, it is determined as follows:

> *"Any person who creates a disturbance near the courtroom during court proceedings and fails to leave after being ordered to do so up to three times by or on behalf of the authorized officer".*

In Article 280, it is determined as follows:

a. *"Failing to comply with court orders issued for the benefit of the judicial process;*
b. *Acting disrespectfully toward law enforcement officials, court officers, or the court proceedings after having been warned by the judge;*
c. *Attacking the integrity of law enforcement officials, court officers, or the court proceedings during a court session; or*
d. *Publishing the court proceedings live without the court's permission".*

In Article 281, it is determined as follows:

> *"Any person who obstructs, intimidates, or influences officials carrying out investigative, prosecutorial, court examination, or court decision duties with the intent to coerce or persuade them to perform or refrain from performing their duties".*

In Article 282, it is determined as follows:

a. *"Hiding a person who has committed a crime or a person who is being prosecuted or sentenced; or*
b. *Providing assistance to a person who has committed a crime to escape from investigation, prosecution, or the execution of a criminal judgment by the authorized official".*

In Article 283, it is determined as follows:

> *"Any person who prevents, obstructs, or hinders the examination of a corpse for the purposes of justice".*

In Article 284, it is determined as follows:

> *"Any person who releases or assists someone in escaping from detention carried out under the order of an authorized official or from prison or a closed sentence".*

In Article 285, it is determined as follows:

> *"Any person who unlawfully fails to appear when summoned as a witness, expert, or interpreter, or does not fulfill an obligation that must be met in accordance with the provisions of legislation".*

In Article 286, it is determined as follows:

> *"Any person who has been declared bankrupt or deemed unable to pay debts, or is the spouse of a bankrupt individual in a marriage with community property, or serves as a manager or commissioner of a civil partnership, association, or foundation that has been declared bankrupt, who fails to appear after being lawfully summoned in*

accordance with the law to provide testimony, refuses to provide the requested testimony, or provides false testimony".

In Article 287, it is determined as follows:

"Any person who fails to comply with the orders of an authorized official in the judicial process to submit documents deemed false or forged, or that must be compared with other documents suspected of being false or forged, or whose authenticity is denied or unrecognized".

In Article 288, it is determined as follows:

"Any person who, without a valid reason, fails to appear or, in permitted cases, does not request a representative to appear when summoned in court to be heard as a blood relative or in-law, spouse, guardian, or supervisor, custodian, or supervisory custodian in matters concerning a person who is to be placed or has already been placed under guardianship or in matters concerning a person who is to be admitted or has already been admitted to a mental hospital".

In Article 289, it is determined as follows:

a. *"Removing items that have been seized by the law or that have been entrusted by court order, or hiding items while knowing that they are under seizure or in custody; or*
b. *Damaging, destroying, or rendering unusable an item that has been seized under the provisions of the law".*

In Article 290, it is determined as follows:

"Any person who unlawfully sells, leases, possesses, pledges, or uses seized items not for the benefit of the judicial process".

In Article 291, it is determined as follows:

"Any person who, under the provisions of the legislation, is required to provide sworn testimony or information that has legal consequences, who give false testimony under oath, whether orally or in writing, either personally or through a specially appointed representative, during the examination of a case in the judicial process".

In Article 292, it is determined as follows:

"Any person who discloses the identity of the reporter, witness, or victim, or any other information that could potentially reveal their identity, despite being informed that such identity must be kept confidential".

In Section III, there is one provision, namely Article 293, which regulates, among other things:

In Article 293, it is determined as follows:

a. *"Any person who damages a courthouse, courtroom, or court equipment, resulting in the judge being unable to conduct court proceedings;*
b. *If the criminal act referred to in letter (a) is committed during ongoing court proceedings, causing the proceedings to be unable to continue;*

c. *If the criminal act referred to in letter (a) results in serious injury to law enforcement officials carrying out their duties or to a witness while providing testimony;*
d. *If the criminal act referred to in letter (a) results in the death of law enforcement officials carrying out their duties or a witness while providing testimony".*

Based on the types of acts classified as contempt of court under Articles 278-293 of Law No. 1 of 2023 concerning the Indonesian Criminal Code (KUHP), there are criminal sanctions ranging from 6 months' imprisonment to a maximum sentence of 15 years, or these may be substituted with fines starting from Category I at Rp. 1,000,000 (one million rupiah) up to the highest Category VI fine of Rp. 2,000,000,000 (two billion rupiah). The imposition of such criminal penalties or fines must go through a court process resulting in a legally binding verdict. Herein lies the weakness when addressing contempt of court through criminal sanctions or fines, as the criminal justice process takes more time compared to the use of coercive detention (*gijzelling*) under administrative law.

The term "contempt of court" originates from the English legal tradition and the common law system in various countries. The history or tradition of contempt of court can be traced back to the Middle Ages, closely related to the governance structure in England in the early Middle Ages, where the king was considered to rule with rights similar to those of the Lord.[29] This concept regarded the king as God's representative in the world[30], accountable only to God, and any form of resistance or disrespect towards the king's authority was considered a serious offense punishable directly by the king. This perspective identified "contempt of court" with "contempt of the King." The statement by Bracton[31], an English legal expert in 1260, reinforced this concept by stating that there is no greater crime than "contempt and disobedience, for all persons ought to be subject to the king as supreme and to his officers."

During that period, contempt of court was considered a specific crime and was punished with harsh actions, such as exile or even hand cutting. However, over time, the punishment for contempt of court became less severe. Alternative sanctions began to emerge, including imprisonment, asset forfeiture, and fines. In Indonesia, the term contempt of court became known in 1985 with the enactment of Law No. 14 of 1985 concerning the Supreme Court. In the United States, the regulation of contempt of court has been governed by law since 1831, with the Act of March 2, 1831, revised in 1873 and 1964. Each state has also established its own rules on contempt of court through specific laws. In Australia, regulations are governed by several laws in each state, such as the Judiciary Act 1903, the Federal Court of Australia Act 1976, Federal Court Rules, and The Criminal Code.[32]

The understanding of Contempt of Court can be interpreted as an intentional act that is deemed to undermine the authority and dignity of the court or obstruct the judicial process

[29] Ibid.
[30] D. J. Human, "An Ideal for Leadership - Psalm 72: The (Wise) King - Royal Mediation of God's Universal Reign," *Verbum et Ecclesia* 23, No. 3 (2002): p. 658–677.
[31] Wahyu W, *Contempt Of Court Dalam Rancangan KUHP* (Jakarta: Elsam, 2007).
[32] Akademik, *Penelitian Contempt Of Court 2002*.

by individuals involved in a case or by parties not involved in the case. Criminal contempt of court can occur both inside and outside the courtroom, and can be active or passive, with the intention of insulting the authority and dignity of the court or obstructing court officials in carrying out the judicial process. In this context, Oemar Seno Adjie states that the act of criminal contempt of court can be directed towards or involve the "administration of justice" or the conduct of the judiciary.[33] Contempt of court can also be understood as any intentional act or omission fundamentally aimed at disrupting or interfering with the system or process of administering justice that should proceed fairly (the due administration of justice).

In common law, contempt of court is often described as a broad term encompassing any action or omission fundamentally intended to interfere with or disrupt the system or process of administering justice, which should proceed fairly (due process of law). The term "contempt of court" is considered a broad term because it can be distinguished into several categories, including "civil contempt" and "criminal contempt," as well as "direct contempt" and "indirect contempt".[34] Thus, the term contempt of court encompasses various behaviors that can harm the integrity and process of the judiciary, and the distinction between types of contempt helps determine the nature and purpose of the violations that occur. Active and/or passive acts that occur intentionally or negligently (actions, behavior, attitudes, or speech) by anyone with the intention to degrade, attack, or insult the authority, dignity, and independence of judicial institutions and judicial officers such as Police, Prosecutors, and Judges (who are essentially given authority as law enforcement officials).

Based on its characteristics[35], contempt of court, as commonly understood in England, is generally divided into two categories: civil contempt and criminal contempt. Civil contempt is employed to describe contempt arising from non-compliance with orders issued by civil courts. Violations in civil contempt stem from the failure of one party involved in litigation to carry out or implement a court order for the benefit or advantage of another party. In this context, the action does not challenge the dignity of the court but rather harms another party. At the request of the aggrieved party, the court issues an order or decree compelling the non-compliant party to fulfill its obligations. Meanwhile, criminal contempt, according to Black's Law Dictionary, is defined as conduct showing disrespect for the court and its judicial processes, with the aim of obstructing, impeding, or disrupting the course of justice or tending to bring the court into disrepute. In this scenario, criminal contempt constitutes a violation directed against the court and its judicial processes. Related to this, Muladi mentions that criminal contempt encompasses any action tending to obstruct the administration of justice, considered an act opposing an institution crucial in advocating public interests.

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[33] Luhut M.P. Pangaribuan, *Advokat Dan Contempt of Court: Satu Proses Di Dewan Kehormatan Profesi* (Jakarta: Djambatan, 1996).
[34] Rusli Muhammad, *Potret Lembaga Pengadilan Indonesia* (Jakarta: RajaGrafindo Persada, 2006).
[35] Niswansyah, "Contempt Of Court Dalam Sistem Hukum Peradilan Di Indonesia."

Based on its activity[36], contempt of court is generally divided into two categories: direct contempt and indirect contempt. Black's Law Dictionary defines direct contempt as an act committed directly and in the presence of the court or within the court's vicinity with the intention of obstructing or disrupting the orderly proceedings of the court. On the other hand, constructive (indirect) contempt refers to contempt of court that occurs outside the courtroom. Typically, such actions are aimed at opposing the administration of justice by engaging in acts or omissions. Black's Law Dictionary defines constructive (indirect) contempt as acts performed not in front of the court or within its vicinity but intended to obstruct or hinder the administration of justice. This often involves the disregard or refusal of the parties involved to comply with valid orders, decisions, or court decrees requiring them to fulfill their obligations or refrain from certain actions.

Furthermore, according to Barda Nawawi Arief[37], the types of actions that constitute contempt of court include:

1. "*Non-compliance with court rules or orders.*
2. *Acts intended to disrupt or obstruct the proper administration of justice.*
3. *Threats against judges, prosecutors, legal advisors, or witnesses.*
4. *Intervention in the proceedings of the court (both within and outside the courtroom).*
5. *Influencing the decision by making comments in the mass media.*
6. *Providing information or publications aimed at shaping public opinion in favor of a particular party.*
7. *Embarrassing or causing a scandal against the court with the intention of undermining the authority of the judge.*
8. *Disturbing/attacking/hitting/threatening judges outside the courtroom.*
9. *Attacking witnesses who are about to or have given testimony in court.*
10. *Violation of duties by court officials.*
11. *Violation by lawyers".*

Overall, this list of acts illustrates a range of ways of contempt of court ranging from direct acts of corruption to more subtle forms of manipulation, all of which have a negative impact on the judicial system and justice in general.

A similar opinion was also expressed by Oemar Seno Adji regarding contempt of court, underlining several forms of actions that can damage the integrity and effectiveness of the judicial system, namely: [38]

1. Acts of defamation against the court through reporting or publication.
2. Failure to comply with court orders.
3. Disrupting the court, attacking the integrity of law enforcement officials.
4. Misconduct in court.

Overall, Oemar Seno Adji's view emphasizes the importance of maintaining the honor and

[36] Ibid.
[37] Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penaggulangan Kejahatan* (Jakarta: Kencana Media Grup, 2007).
[38] Adji, *Contempt Of Court Suatu Pemikiran*.

integrity of the courts and the legal process. All forms of action mentioned have the potential to undermine the authority of the courts and disrupt the administration of justice, which can ultimately reduce public confidence in the legal system and the judicial process.

Meanwhile, Asterlay's opinion regarding contempt of court includes: [39]

1. Contempt in the face of the court/contempt in facie.
2. Scandalizing the court.
3. Reprisals against jurors and witnesses.
4. Obstructing officers of the court.
5. Violation of the sub judice rule.
6. Publication with a prejudice issue in pending proceedings.\

Asterlay's view emphasizes various forms of action that can disrupt, damage, or affect the integrity of the justice system. These actions not only damage the legal process but can also affect public confidence in the justice system and reduce the quality of justice that is upheld.

According to the author, behavior that can be classified as contempt of court refers to actions taken by legal subjects, whether individuals or legal entities, that must be carried out with intent or awareness and accompanied by bad faith, as the subjective element that must be fulfilled. Meanwhile, the objective element can refer to the provisions of Articles 278-293 of Law No. 1 of 2023 on the Criminal Code. However, the author does not question whether contempt of court should be classified as a violation of criminal, administrative, or civil law. What is more important is recognizing contempt of court as an act that has the potential to undermine the dignity of the judiciary and the legal process for justice seekers (*justiciabelen*), ultimately resulting in legal uncertainty. This goes against the concept of the rule of law, which must be respected by all citizens without exception, as reflected in the principle of equality before the law.

Ultimately, it is hoped that with clear and effective regulations on contempt of court, everyone in Indonesia's legal system will respect and comply with court decisions that have gained legal force. This would prevent ongoing legal processes from being trivialized or exploited by legal mafias. All parties must honor every legal process, ensuring that the presumption of innocence is upheld in a concrete manner. This will also ensure that judicial decisions are truly final and binding. The use of coercive detention (*gijzelling*), as found in administrative law, should be applied to those who refuse to comply with court rulings (*inkracht van gewijsde*) as a form of contempt of court. This measure appears to be an effective solution to shorten the time needed to compel those proven to have disobeyed court orders to comply promptly.

[39] Romli Atmasasmita, *Sistem Peradilan Pidana : Persfektif Eksistensialisme Dan Abolisionisme* (Bandung: Bina Cipta, 2006).

Based on the understanding from various experts, the author will now provide an opinion regarding the types and behaviors that constitute contempt of court, namely:

1. All actions carried out by the general public that have the potential to disrupt the law enforcement process (both within and outside the courtroom), whether it be criminal, civil, administrative, religious, or military cases. This can be qualified as obstruction of justice.
2. All actions carried out by legal entities (individuals/corporations) that ignoring court decisions when they have obtained legal force (*incracht van gewijsde*). This can be qualified as disobedience of law.
3. All actions carried out by individuals with influence/power who attempt to intervene in various ways against law enforcement officials (Police, Prosecutors, Judges, Lawyers) while carrying out their duties to uphold justice, thus not in accordance with legal regulations and general principles of good governance. This can be qualified as abuse of power.

These actions can be carried out both directly and indirectly, causing the goal of achieving justice to be unrealized. Consequently, legal certainty and the effectiveness of law enforcement will be further removed from the dignity of the supremacy of law in Indonesia's law enforcement institutions.

3.3. The Use of *Gijzelling* as a Sanction for Contempt of Court Offenders

Government coercion (*bestuursdwang*) is a tangible action (*feitelijk handelingen*) undertaken by a government organ or on behalf of the government to move, vacate, obstruct, or restore to the original condition anything that has been or is being done in violation of obligations stipulated in legislation. This concept is well-known in administrative law, and its characteristics lean towards preventive, reparatory, and condemnatory aspects.[40] In line with the characteristics of administrative law, the imposition of sanctions must be preceded by a warning letter.[41] Only when this letter is disregarded can administrative sanctions be imposed on the violator. A warning before the imposition of *bestuursdwang* must include clear descriptions of facts or actions that violate specific legal rules, a precise indication of the violated law, and considerations explaining why *bestuursdwang* is deemed necessary[42].

In the context of disregarding a legally binding court decision that has gained legal force (*inkracht*), and the addition of a summons (*aanmaning*) relation by the court based on the petitioner's execution request to the execution defendant, it qualifies as a warning or

[40] Syahrul Machmud, "Tindakan Preventif Dan Represif Non-Yustisial Penegakan Hukum Administrasi Oleh Eksekutif," *Jurnal Hukum Media Justitia Nusantara* 7, No. 2 (2017): p. 22.

[41] Wicipto Setiadi, "Sanksi Administratif Sebagai Salah Satu Instrumen Penegakan Hukum Dalam Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 6, no. 4 (2009): 603–614.

[42] This is in accordance with article 5:21 of the Gemeentewet (Dutch Municipal Law) which states: "*Een last tot gehel of gedeeltelijk herstel van de overtreding, en de bevoegheid van het bestuursorgan om de last door faitelijk handelen ten uitvoerte leggen, indien de last niet of niet tijdeg wordt uitgevoerd*", in Centrum voor criminaliteitspreventie en veilligheid, Churchillian 11, 3527 GV, Utrecht.

admonition. Its classification can even be considered a court order, allowing the application of administrative sanctions, such as the concept of *bestuursdwang* in the form of Forced Detention (*Gijzelling*), theoretically borrowing legal instruments from the administrative law domain, which can be applied to those neglecting non-executable court decisions or orders. *Bestuursdwang* (executive coercion) can be equated with government coercion, known as "Forced Action." To understand the existence of *bestuursdwang* in administrative law, one cannot separate it from the nature of the relationships between the parties (legal subjects) involved in administrative law. The relationship between legal subjects, in this case, administrative law (government) and citizens, is of a subordinate nature. In Dutch terms, this relationship is reflected in the use of the term "*overheid*" (government) and "burger(s)" (citizens). This subordinative relationship includes not only the determination of legal relations (*eenzijdige vastelling recht door overheid*) but also grants the government the authority for unilateral legal determination (*eenzijdige vastelling recht door overheid*), which includes *bestuursdwang* itself.[43]

Gijzelling, which is classified as a coercive action by the government, must be carried out in a limited and constructive manner. In addition to its legal impact on specific legal subjects, *gijzelling*, formulated through a *beschikking*, has concrete, individual, and final characteristics. To prevent arbitrary actions by government officials, *gijzelling* must be based on considerations outlined in the General Principles of Good Governance (Asas-Asas Umum Pemerintahan Yang Baik) as explained in Article 10 of Law No. 30 of 2014, including the following principles:

a. Principle of Legal Certainty
   This principle prioritizes the rule of law, ensuring that government policies are based on legislation, propriety, consistency, and justice.
b. Principle of Utility
   The balance of benefits must be maintained, considering: (1) individual interests, (2) individual interests and society, (3) citizens and foreign communities, (4) different community groups, (5) government and citizens, (6) current and future generations, (7) human and ecological interests, and (8) gender equality.
c. Principle of Impartiality
   Government bodies and officials must make decisions and actions that consider the interests of all parties fairly and without discrimination.
d. Principle of Diligence
   This principle mandates that decisions and actions must be based on complete and accurate information and documentation, ensuring careful preparation before implementation.
e. Principle of Non-Abuse of Authority

[43] I Gusti Ayu Ketut Rachmi Handayani, "Peranan Sanksi Administrasi Dalam Penegakkan Hukum Lingkungan Di Indonesia," *Pranata Hukum* 5, No. 1 (2010): p. 40.

This principle obliges government bodies and officials not to use their authority for personal or other improper purposes, ensuring that they do not exceed or misuse their powers.

f. Principle of Transparency
The government must ensure access to accurate, honest, and non-discriminatory information, while protecting personal rights, group confidentiality, and state secrets.

g. Principle of Public Interest
Government actions must prioritize public welfare in an inclusive, aspirational, selective, and non-discriminatory manner.

h. Principle of Good Service
This principle requires timely public service delivery with clear procedures and costs, in accordance with established service standards and regulations.

The construction of the use of *gijzelling* (detention as a means of coercion) can be traced to the regulations governing tax dispute resolution, which began with the establishment of a tax dispute resolution body that later transformed into the Tax Court. The legal basis for defining *gijzelling* is provided in Article 1 point 21 of Law No. 9 of 2000, which defines "detention" as the temporary restriction of the taxpayer's freedom by placing them in a specific location. According to Article 5 paragraph (1) letter d of Law No. 9 of 2000, detention is carried out by a tax bailiff. In performing this duty, the tax bailiff can request assistance from the Police, the Prosecutor's Office, the Ministry responsible for legal and legislative matters, local governments, the National Land Agency, the Directorate General of Maritime Transportation, the District Court, banks, or other relevant parties (refer to Article 5 paragraph (4) of Law No. 9 of 2000). The tax bailiff, as an executive officer, is required to obtain permission from the Minister of Finance for central tax matters or from the Governor for local tax matters. The detention order must include specific information (vide: Article 5 Government Regulation No. 137 of 2000):

a. The identity of the taxpayer,
b. The reason for the detention,
c. Authorization for the detention,
d. The duration of the detention, and
e. The location of the detention

This means that once the detention order is issued to the tax debtor, it becomes concrete, individual, and final. Moreover, the detention order is considered to have executory power because it is accompanied by the phrase "For the sake of Justice under the Almighty God", which gives it the same legal standing as a court decision that has attained permanent legal force (vide: Article 7 paragraph (1) of Law No. 9 of 2000). Thus, the application of *gijzelling* assists justice seekers by achieving a judicial process that is simple, fast, and low-cost (vide: Article 4 paragraph (2) of Law No. 48 of 2009). The term "simple" refers to the efficient and effective handling and resolution of cases. "Fast" means that the process is straightforward, without requiring complex court proceedings. "Low-cost" indicates that the costs involved are affordable for the public. However, the principles of simplicity,

speed, and low-cost justice should not compromise the importance of accuracy and precision in uncovering both procedural and substantive truth and justice. According to Article 1 of the Supreme Court Regulation No. 1 of 2000, a person subjected to *gijzelling* is placed in a state detention facility based on the assessment of their bad faith. Bad faith here implies that the individual is deemed capable of fulfilling certain legal obligations but intentionally refuses or fails to do so.

The existence of *bestuursdwang* differs from the enforcement of administrative sanctions through litigation in court decisions. According to Lotulung's opinion, the presence of *bestuursdwang* implies that court decisions lack strength and dignity. This is because court decisions, particularly related to execution, emphasize self-respect and legal awareness of the parties involved in the court decision (voluntarily) without direct enforcement efforts that can be felt and imposed by the court on the violator.[44] This situation can create legal uncertainty due to the absence of deterrent effects for the violator. In the domain of civil court decisions, there is a term for decisions classified as non-executable. Similarly, in the domain of administrative court decisions, it is confirmed that the losing party (defendant) is a public official or the issuer of an administrative court verdict, and often, they do not comply with the court's orders or decisions. In legal practice, this is highly likely to occur because there is no coercive normative instrument to address this issue. However, in legal theory and legal development, the regulatory vacuum concerning non-executable decisions that underlie the neglect of court decisions by the execution defendant or by public officials or administrative court verdict issuers must be resolved promptly, and a solution must be found.

According to the opinion of Philipus M Hadjon, *bestuursdwang* is the authority for the Central/Regional Government and the Indonesian People's Consultative Assembly (DPR RI)/Regional DPR to issue necessary orders to implement or restore real conditions in accordance with the prevailing laws and regulations.[45] As *bestuursdwang* (administrative enforcement) is a discretionary authority, not an obligation, its application to punish administrative violations is the government's choice, along with other administrative sanctions. So, to determine whether an action is considered a governmental action (*feitelijk handelingen*), three criteria must be met, namely the action is carried out by government officials in their official capacity, the action is intended to produce legal consequences in the field of administrative law and the action is carried out in the implementation of government functions and in the interests of the state and society. Of course, government actions are carried out with the aim of preventing losses or negative impacts on all interests of the community and the state.[46]

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44 Zairin Harahap, *Hukum Acara Peradilan Tata Usaha Negara* (Jakarta: RajaGrafindo Persada, 2006).

45 Dkk. Philipus M Hadjon, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 2008).

46 A Munir et al., "Diskresi Presiden Dalam Pengaturan Keterbukaan Informasi Perpajakan Government Discretion in Regulation of Tax Information Disclosure," *Halu Oleo Law Review* 5, No. 1 (2021): p. 79.

The definition of physical coercion (*gijzelling*) is explicitly outlined in Article 1, point 15 of Government Regulation No. 28 of 2022, which states: "temporary restriction of the freedom of the debtor/guarantor or any party obtaining rights who, by law, is legally responsible for state receivables." This interpretation indicates that the restriction of an individual's freedom (detention) is temporary, lasting for a maximum of six (6) months (refer to Article 58, paragraph 1 of Government Regulation No. 28 of 2022). If, at any time during this detention period but before the six months have elapsed, the detained individual complies with their legal obligations (i.e., fulfilling or performing what is legally required), they will be immediately released from detention. This means that the detention is not permanent and does not have a fixed duration like a criminal sentence. Instead, the duration of detention depends on the individual's good faith and willingness to comply with the legal obligations imposed on them.

In this sense, the detention serves as a form of coercion where the length of punishment is influenced by the person's willingness to fulfill their legal obligations. Conversely, bad faith or non-compliance can significantly affect the length of the detention, as the individual is considered to lack good faith according to the law and the judgment of law enforcement authorities. To avoid uncertainty in the application and enforcement of *gijzelling*, it is crucial to establish a legal norm that provides clear limitations and parameters for assessing good faith. This would ensure that law enforcement officers can apply the law and exercise their duties in a measured and non-arbitrary manner. Clear definitions and measurable standards of good faith would help maintain fairness and prevent abuses of the coercive measures.

When *gijzelling* is identified as a punishment that restricts an individual's liberty, like imprisonment or detention under criminal sanctions, it is essential to recognize that *gijzelling* cannot be equated with criminal penalties, such as imprisonment or detention, within the context of criminal law. This is because *gijzelling* is derived from administrative law, rather than from criminal law. In criminal law, the imposition of criminal sanctions, including imprisonment or detention, must follow a due process that involves a court hearing, and a verdict delivered by a panel of judges. As the deprivation of liberty is a significant encroachment on an individual's human rights, Article 9(4) of Law No. 12 of 2005, regarding the ratification of the International Covenant on Civil and Political Rights (ICCPR), states:

> "*Anyone deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful*."

Furthermore, Article 6(2) of Law No. 48 of 2009 affirms:

> "*No one shall be punished unless the court, based on legally valid evidence according to law, is convinced that the person responsible has been proven guilty of the act for which they are charged*."

These provisions reflect the foundational principles of equality before the law and the supremacy of law, as enshrined in Article 27(1) and Article 28D (1) of the UUD NRI 1945. These articles establish that: "All citizens have equal standing before the law and government and are obliged to uphold the law and government without exception. Every person has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law." These principles underscore those legal processes, especially those involving the restriction of individual liberty, must be fair, transparent, and grounded in the rule of law.[47] The administrative nature of *gijzelling*, although involving the deprivation of liberty, does not require the same criminal procedural safeguards as criminal sanctions. However, it must still adhere to the basic tenets of justice and legal certainty to prevent arbitrary or unjust application.

Based on the legal foundation outlined above, it is inappropriate to apply *gijzelling* in reference to criminal law provisions and concepts. This is because the fundamental deprivation of liberty through criminal sanctions, such as imprisonment or detention, must undergo a judicial process. *Gijzelling*, as a punitive instrument recognized within the framework of administrative law, can serve as a rapid and effective solution for punishing individuals committing contempt of court without the need for a judicial process. This presents a new breakthrough in law enforcement in Indonesia, particularly under the administrative law principle of *in causa davenendum*, which implies that every legal violation should incur a penalty or punishment.

As a rule of law, it must be acknowledged that *gijzelling* as a punishment for contempt of court can only be legitimately implemented when there is formal, and material legal provisions established by the Government. However, this does not imply that the use of *gijzelling* is unconstitutional or irrational. According to Article 24(3) of the 1945 Constitution of the Republic of Indonesia, it implicitly grants the Government the authority to establish other bodies related to the judicial power regulated by law. In addition to referring to Government Regulation No. 28 of 2022, the technical provisions (procedural law) related to the use of *gijzelling* should ideally be further detailed through specific legislation. A fundamental argument supporting the use of *gijzelling* against individuals committing contempt of court without litigation is that it is not unconstitutional or a violation of human rights, as referenced in Article 28J (2) of the 1945 Constitution, which states:

"In exercising his/her rights and freedoms, every person shall be subject to restrictions prescribed by law solely for the purpose of guaranteeing the recognition and respect of the rights and freedoms of others and to fulfill the demands of fair considerations in accordance with moral values, religious norms, security, and public order in a democratic society." This provision indicates that individuals committing contempt of court (disregarding court rulings) do not adhere to legal restrictions and fail to respect the rights and freedoms of others, thus acting immorally and causing disorder related to the dignity

[47] et al. Haryanto, Tenang, "Pengaturan Tentang Hak Asasi Manusia Berdasarkan Undang-Undang Dasar 1945 Sebelum Dan Setelah Amandemen," *Jurnal Dinamika Hukum* 8, No. 2 (2013): p. 136–144.

of the court, leading to legal uncertainty. Therefore, through an a contrario interpretation of Article 27(1) and Article 28D (1) of the 1945 Constitution, it can be concluded that those who deserve legal protection and fair treatment before the law are those who do not disregard their basic obligations as outlined in Article 28J (1) of the 1945 Constitution.

Thus, the use of the *gijzelling* instrument recognized in the concept of administrative law can be applied to individuals committing contempt of court (disregarding court rulings), and this does not violate human rights as provided for under the ICCPR and is constitutional according to the 1945 Constitution. Furthermore, as a manifestation of the rule of law, the imposition of *gijzelling* as a product of administrative decisions (*beschikking*) can still be challenged in the Administrative Court, using the benchmarks of good governance principles and other applicable legal regulations.

When *bestuursdwang* is considered not as an obligation for the government, but also not interpreted as an entirely discretionary authority, there are legal instruments that make *bestuursdwang* a constrained and/or facultative authority. A discretionary authority must be limited to prevent the abuse of power and arbitrary actions by the government. This limitation serves as the best middle ground to bridge justice for both the government and the public. Normatively, the limitation of authority is regulated based on Article 8 paragraph (2) of Law No. 30 of 2014 concerning Government Administration, which states "Government Bodies and/or Officials, in using authority, must be based on laws and AAUPB (General Principles of Good Governance)." In some legal doctrines and jurisprudence, the principle of specificity (*specialitet beginselen*)[48] is recognized, considering the "purpose" for which the authority is used or granted to be used by public officials. Based on the nature of the act (disregarding court decisions), in determining the imposition of government coercion sanctions:[49]

1. In cases of non-substantial violations, the Government should not immediately resort to government coercion (*bestuursdwang*). For non-substantial violations, the government can still engage in legislation. In this regard, the Government instructs citizens who commit licensing violations to promptly process their permits. If the citizen has been instructed to process the permit but fails to do so, the government can then apply government coercion sanctions (*bestuursdwang*).
2. In cases of substantial violations, the Government can directly implement government coercion (*bestuursdwang*). Regardless of whether the violation is substantial or not, the determination must adhere to applicable legal provisions, both written and unwritten, related to the permits in question. This includes General Principles of Good Governance (AAUPB), such as the principles of legal certainty, public interest, proportionality, careful action, motivation in decision-making, as well as justice and reasonableness.

[48] Nur Basuki Minarno, *Penyalahgunaan Wewenang DanTindak Pidana Korupsi Dalam Pengelolaan Keuangan Daerah* (Palangkaraya: Laksbang Mediatama, 2009).

[49] Ivan Fauzani Raharja dan Ratna Dewi, "Penegakkan Hukum Sanksi Administrasi Terhadap Pelanggaran Perizinan," *Inovatif* 7, No. 2 (2014): p. 39.

Philipus M Hadjon, in his writing on the Enforcement of Administrative Law in Environmental Management, states that:[50] tangible coercion (*bestuursdwang*) is formulated as a tangible action to move, vacate, obstruct, or rectify the situation to its original state, which contradicts the obligations specified by legislation. The sanction of government coercion (*bestuursdwang*) is the primary sanction for rectifying the situation (reparatory), intended to prevent further damage/loss and, on the other hand, to restore the situation to its original state with the cost burden directly imposed on the violator without going through a court decision. Although it is the primary instrument, the implementation of this sanction does not guarantee a lack of reaction from the violator. On the other hand, special procedures are still needed to collect the cost burden related to recovery actions, as outlined above.

Regarding the effectiveness or advantages of enforcing administrative law in community life (empirical), citing the opinion of Mas Achmad Santoso:

1. The enforcement of administrative law can be optimized as a preventive tool;
2. The enforcement of administrative law (which is preventive in nature) can be more cost-efficient compared to criminal and civil law enforcement. Financing for the enforcement of administrative law includes the cost of routine field supervision and laboratory testing, which is cheaper than the efforts involved in collecting evidence, field investigations, employing expert witnesses to prove causality aspects in criminal and civil cases;
3. The enforcement of administrative law (*bestuursdwang*) has a greater ability to invite community participation. Community participation occurs from the licensing process, monitoring, planning/supervision, to participating in filing objections and requesting administrative officials to impose administrative sanctions.

The weakness of imposing criminal sanctions or punishment for contempt of court, which is the disregard of court decisions, applies to individuals, legal entities, and public officials[51].[52] If criminal sanctions such as imprisonment are imposed, the essence of the legal obligation regarding the ignored decision, due to reasons of non-executability, may not necessarily be answered (implemented for compliance). This is because the essence of punishment (*straaf*) in criminal proceedings, which involves imprisonment (deterrence)[53], is aimed at deterring the criminal behavior of the perpetrator, not compelling them to do something related to property (*vermogens*)[54], such as fulfilling a specific legal obligation (recovery), like compensation or payment of fines and interest, as

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50 Philippus M. Hadjon, "Penegakkan Hukum Administrasi Dalam Pengelolaan Lingkungan Hidup," *Jurnal Hukum IUS QUIA IUSTUM* 2, No. 4 (1995): p. 45.

51 The application of administrative sanctions is a further consequence of supervisory actions "*once supervising apparatus found legal violation related to air polution legislation (i.c environmental licensing, air quality standards, emmission standards) commited by industri (or users of motor vehicles), administrative sanctions was consequently enforce*".

52 G.H. Addink, *Enforcement of Environmental Law* (Netherlands: Kluwer, Deventer, 1999).

53 P.A.F .Lamintang, Franciscus Theojunior Lamintang, *Dasar-Dasar Hukum Pidana* (Jakarta: Sinar Grafika, 2018).

54 Ibid.

is the essence in civil or administrative disputes. Additionally, the process of imposing criminal sanctions requires a trial, which can contradict the principles of swift, fast, and cost-effective justice. The trial process can take months, which goes against the principles of expeditious legal proceedings.

As an effective solution, the application of sanctions in the form of "*Gijzelling*" (coercive detention), which is a type of administrative sanction through *bestuursdwang*, could be implemented for individuals who ignore court decisions or orders. This is not considered an arbitrary action by the government and does not contradict the presumption of innocence as regulated in Article 8, paragraph (1) of the Judicial Power Law. Because government coercion has characteristics of recovery and is temporary, "*Gijzelling*" (coercive detention) is issued by public officials authorized by regulations and the general principles of good governance, as well as the principle of specialty.

Regarding the act of ignoring court decisions, when the authority to enforce the use of "*Gijzelling*" has not been normatively regulated, based on the principle of specialty (purpose principle), the government agency responsible for prisons, namely the Ministry of Law and Human Rights, can use its authority (to issue coercive detention sanctions) if requested by the court under the order of the Chief Justice who deems the decision requested by the execution applicant has not been carried out (non-executable) after three successive admonitions (*aanmaning*) by the execution defendant. This can also be applied to public officials or issuers of *beschikking* (KTUN) who fail to implement the decisions of the administrative court. The imposition of "*Gijzelling*" (coercive detention) is conditional or tentative[55], meaning that if the execution of the court order or decision at issue has been fully implemented by the execution defendant and/or public officials upon the order of the administrative court, the person subject to "*Gijzelling*" (coercive detention) can be immediately released from this administrative sanction. Thus, the spirit of recovery becomes evident because the consequences of ignoring the court decision have been fulfilled based on the court's command. The absence of a minimum duration for the application of "*Gijzelling*" (coercive detention) shows that this sanction is flexible without undermining the sanctity of administrative sanctions as a solutive instrument of *bestuursdwang*.

4. Conclusion

The act of ignoring a court decision, classified as contempt of court, reflects the issue of disrespect for the dignity of the judicial institution, judges, and justice for justice seekers (*justiciabelen*) in particular and society in general. The issue of legal justice intersects with social justice as guided by Pancasila's fifth principle. Therefore, the responsibility to realize it is not solely a burden of the judiciary. When it becomes a common interest, all state institutions in Indonesia are expected to play a role and contribute according to their authority in creating social justice for the entire Indonesian people. Hence, the instrument

[55] Made Ari Permadi, "Kewenangan Badan Lingkungan Hidup Dalam Pemberian Sanksi Administratif Terhadap Pelanggaran Pencemaran Lingkungan," *Jurnal Magister Hukum Udayana* 5, No. 4 (2016): p. 653.

of *bestuursdwang* as a tangible government action in the administrative law domain can be applied to impose the sanction of "*Gijzelling*" (coercive detention) against individuals who demean the dignity of the court (contempt of court) related to the disregard of court decisions due to non-executability or other reasons. Based on its authority, the Ministry of Law and Human Rights, as a state institution deemed competent to impose or use "*Gijzelling*" (coercive detention) against those who ignore court decisions (contempt of court). This is grounded in the principle of specialty (*specialitiet beginselen*), the general principles of good governance (AAUPB), and competence in handling prisoners or detainees through correctional institutions (LAPAS) or detention houses (RUTAN), which fall under the domain of the Ministry of Law and Human Rights. Hence, there is legal logic (*ratio logis*) with relevance and overlap in authority in using *bestuursdwang* against the issue at hand. The use of the sanction "Gijzelling" (coercive detention) is believed to be more effective than resorting to judicial proceedings or litigation processes in imposing criminal sanctions or other penalties against contempt of court perpetrators related to the disregard of final court decisions. Justice seekers (*justiciabelen*) would benefit greatly as they no longer need to go through lengthy legal processes, hoping that "*Gijzelling*" (coercive detention) serves as a compelling threat related to the order to execute the court decision n. This aligns with the principles of "*litis finiri oportet*" and the principles of quick, concise, and cost-effective trials. Ultimately, the image of law enforcement will uphold principles of certainty, justice, and utility in a professional and integrity-driven manner, ensuring that seeking justice through the courts is a meaningful endeavor. This, in turn, enhances the dignity of the judiciary, earning respect from everyone.

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