

“Juridic Review On Civil Decisions Which Was Not Executed Because Of Resistance In The Tobelo State Court” (Judiction Analysis Number 11/Pdt.G/2011/Pn.Tbl

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ARTICLE INFO

Article history:

Received Sep 12, 2022
Revised Sep 19, 2022
Accepted Oct 10, 2022

Keywords:

Execution;
Third Parties;
resistance

ABSTRACT

This study is to find out the legal actions taken in the execution of the Tobelo District Court and what are the causes of the non-execution of the object in case Number 11/Pdt.G/2011/PN.TBL which has permanent legal force (inkracht). This research is a normative legal research, namely research that focuses on examining the decision of the Tobelo District Court regarding claims for land ownership without rights and why the decisions of the Tobelo court judges who already have legal force are still hampered in the execution process. The source of data used in this study is secondary data, namely data obtained from library research and documents, which are the results of research and processing of others, which are already available in the form of books or documents that are usually provided in libraries, or privately owned. In legal research, secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials. Based on the results of the research conducted, it can be concluded that this decision cannot be executed due to resistance to the object by third parties and the defendants / defendants. There were also executions that were hampered because when the execution confiscation was about to be placed on the object of the case, it turned out that the object of the case had changed hands to a third party due to the National Land Agency (BPN) continuing to process the transfer of names or the issuance of a new certificate on the object of the dispute. Upon the request for execution, a third party who also feels that they have the right to the object of the dispute then submits another rebuttal or resistance to the execution.

ABSTRAK

Penelitian ini adalah untuk mengetahui tindakan hukum yang dilakukan dalam pelaksanaan eksekusi di Pengadilan Negeri Tobelo dan apa saja penyebab tidak dilaksanakannya eksekusi objek dalam perkara Nomor 11/Pdt.G/2011/PN.TBL yang sudah berkekuatan hukum tetap (inkracht). Penelitian ini adalah penelitian hukum normatif, yaitu penelitian yang berfokus mengkaji putusan Pengadilan Negeri Tobelo tentang gugatan kepemilikan tanah waris tanpa hak dan mengapa putusan hakim pengadilan tobelo yang sudah mempunyai kekuatan hukum tetap terhambat dalam proses eksekusinya. Sumber data yang digunakan dalam penelitian ini adalah data sekunder, yaitu data yang diperoleh dari penelitian kepustakaan dan dokumen, yang merupakan hasil penelitian dan pengolahan orang lain, yang sudah tersedia dalam bentuk buku-buku atau dokumen yang biasanya disediakan di perpustakaan, atau milik pribadi. Dalam penelitian hukum, data sekunder mencakup bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Berdasarkan dari hasil penelitian yang dilakukan dapat diperoleh kesimpulan bahwa putusan ini tidak bisa dieksekusi dikarenakan adanya perlawanan atas obyek tersebut oleh pihak ketiga maupun para tergugat / termohon. Ada juga eksekusi yang mengalami hambatan karena pada saat akan diletakan sita eksekusi atas objek perkara, ternyata objek perkara telah berpindah tangan kepada pihak ketiga yang disebabkan karena Badan Pertanahan Nasional (BPN) tetap memproses balik nama atau penerbitan sertipikat baru atas objek sengketa. Atas permohonan eksekusi itu, pihak ketiga yang juga merasa memiliki hak atas objek sengketa kemudian mengajukan lagi bantahan atau perlawanan terhadap pelaksanaan eksekusi.

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I. INTRODUCTION

Dispute is a situation where there is a party who feels aggrieved by another party, which then the party conveys this dissatisfaction to his party. If the situation shows a difference of opinion, then what is called a dispute occurs. Disputes can happen to anyone and anywhere. Disputes can be anything in the family and society, so many interests between people cause problems that arise to also become complex, these problems which if not resolved will become disputes. Disputes as described above are a form of a person's dissatisfaction with another person because of something, even many of these disputes reach the court if the settlement amicably finds a way of settlement outside the court.

Everyone has many interests and usually these interests are not far from material problems or in other words everyone has something that must be protected, for example someone's property ownership of an object, both movable and immovable. Recognition of ownership of an object is a crucial thing at this time. Countless in each area there are disputes over ownership of an object that leads to quarrels, fights and even killing each other. In addition, disputes over an object are not uncommon to enter the trial process in the Court because each party's acknowledgment of ownership of an object is accompanied by documentary evidence that they each have. Disputes over land ownership are one of the problems that cause tension and even sue each other in court in a family, both between husband and wife who have been divorced to fight over joint property or inheritance of property in the form of land contested by their heirs. Regarding land ownership, according to the laws and regulations governing land ownership, land ownership is legally identical with legal certainty.

Based on Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, it is stated that the state of Indonesia is a state of law. The consequence as a state of law is that every citizen is bound by the applicable laws and regulations. Provisions as a state of law (*rechstaat*) have strong and clear reasons for the interests of the citizens themselves. According to Gustav Radbruch, (*Satjipto Rahardjo, 2020*) a German legal philosopher teaches the concept of three basic legal elements ideas which some experts identify as three legal objectives, namely justice, expediency and legal certainty, as a legal state, recognition of property rights has been regulated in various regulations. This is in line with the legal theory developed by Roscou Pound, namely law is a tool of social engineering (*Law as a tool of social engineering*).

Disputes regarding ownership of land as immovable property in the sense of property law are rife and occur a lot, because it is recognized that land is a very valuable asset and has high selling value at all times. Disputes about land that reach the court level (*litigation*) every year can be said to have never decreased and even increased in various regions, it is understood that apart from the increasing price, land is also something that can be used with various interests. Disputes and conflicts usually occur due to differences in the perception of interests between two or more parties, whether between individuals, groups and corporations, and others, regarding the status of control and ownership of land or the decisions of State Administration officials in the land sector (*Insi Nantika Jelita, 2021*)

Based on the foregoing, an example of a case that occurred in North Maluku, precisely in the Tobelo District Court, North Halmahera Regency, was a case concerning disputes between residents that were resolved to the court level (*litigation*) with case Number 11/Pdt.G/2011/PN.TBL . where a

man named Alm. The Hohakai craftsman has garden land that was lent to another person named Alm. Lane Asiz. The dispute began when the heirs of the late Alm. Tukang Hohakai sued the heirs of the late Lanae Asiz because the land owned by Tukang Hohakai was controlled by the heirs of the late. Lane Asiz. (Putusan Nomor 11/Pdt.G/2011/PN TBL. Tahun 2021)

Based on the description of the position of the plantation land case belonging to the late. Hohakai Builder Never bought by the late. Lanae Asiz, only on loan to be managed, but until the late. Lanae Asiz died, the land was never returned, even now it is controlled by his heirs and has been sold to a third party who is also a defendant in this case. The plaintiffs have repeatedly warned the defendants, both the heirs of Lanae Asiz as well as the Defendants who bought the disputed land, but were ignored, that the defendants had shown their evil intentions to control themselves and sell to other defendants the land of the object of the dispute, therefore the heirs of the late . Tukang Hohakai sued Lanae Asiz's heirs at the Tobelo District Court, and the Tobelo District Court's decision accepted the claim of the late heirs. Hohakai craftsman.

However, in reality this problem did not stop with the Tobelo District Court's decision but continued at the Appeal, Cassation, and Judicial Review, where the decision was *inkracht* until now it could not be executed due to a lawsuit against the late heirs. Lane Asiz. This case is still not finished because the execution process has not been carried out by the Tobelo District Court because based on the contents of the lawsuit above, it is known that the garden land has been controlled by a 3rd party (three) by way of buying and selling from the defendants, the heirs of Lanae Asiz.

Execution is carrying out a court decision that has permanent legal force (*res judicata* / *inkracht van gewijsde*). Based on the implementation of the Civil Decision which regulates the execution, it is regulated in Law no. 48 of 2009 concerning Judicial Power in Article 54 paragraph (2) which states that "The implementation of court decisions in civil cases is carried out by clerks and bailiffs led by the head of the Court" and Article 195 paragraph (1) HIR "Judges' decisions in cases at the first examined by the district court, carried out on orders and under the leadership of the chairman of the district court who examined the case" Article 196 HIR "If the defeated party is unwilling or negligent to comply with the decision properly, then the winning party submits a request to the chairman of the district court in Article 195 paragraph (1), either orally or by letter so that the decision is implemented. Then the chairman will summon the losing party and admonish him, so that he fulfills the decision within the time determined by the chairman, for a maximum of eight days" and Article 207 paragraph (1) RBg "In the case of the losing party's reluctance or negligence to implement decision voluntarily, then the winning party can verbally or in writing apply for the relevant decision to be implemented" (Regulation of Legal Procedures for Regions Outside Java and Madura)

The question is why the decision cannot be executed, from the researcher's initial observation that this decision cannot be executed due to resistance to the object by third parties and the defendants / defendants. There were also executions that were hampered because at the time the confiscation was placed on the object of the case, it turned out that the object of the case had changed hands to a third party because the National Land Agency (BPN) continued to process the transfer of names or the issuance of a new certificate on the object of the dispute. Upon the request for execution, a third party who also feels that they have the right to the object of the dispute then submits a rebuttal or resistance to the execution. It raises questions for researchers, that this case has permanent legal force and has won the heirs of the late. Tukang Hohakai as the legal owner of the land, but why until now the garden land has not been able to carry out executions only because the losing party in this case the defendants, the heirs of Lanae Asiz and the defendants as buyers of the land, fought back.

Based on the description of the problem above, the researcher is very interested in making this problem a research study to find out more about the settlement of this case by raising the title of the study, namely: "Juridical Review of Civil Decisions That Are Not Executed Due to Opposition at the Tobelo District Court. (Analysis of Decision Number 11/Pdt.G/2011/PN.TBL) as a thesis research.

According to Riswanda Harvianto and Heri Hartanto (2019) writing that the object of the execution to be executed has been a dispute resolution between a third party and the respondent whose execution was carried out outside the court, where later the decision to reach an agreement will still be taken by the parties themselves. As for the execution, it is waiting for a decision on extraordinary legal remedies that has been submitted by the applicant for execution.(Riswanda Harvianto, Heri Hartanto, 2019)

According to Robitum Maftukh Zakariyah and Ahmad Riyadh U.B (2020) that civil executions are divided into two types, namely real executions and executions paying a sum of money, where this execution is a forced action carried out by the court with the help of related parties to the losing party to implement decisions that have permanent legal force. However, it often happens that the execution cannot be carried out because of various obstacles, such as the object of the execution is in the hands of a third party and there is resistance from the litigants and the status of the land that has changed into state property. (Robitum Maftukh Zakariyah dan Ahmad Riyadh U.B., 2020).

II. RESEARCH METHOD

Legal research is a scientific activity, which is based on certain methods, systematics and thoughts, which aims to study one or several certain legal phenomena, by analyzing them. This thesis writing method describes how to organize thesis writing as well as possible, while the research methods used in collecting data for writing include:

Tipe dan Jenis Penelitian

The type of research used in this research is normative legal research, namely research that focuses on examining the decision of the Tobelo District Court regarding the claim of inheritance of land without rights and why the decision of the Tobelo Court judge who already has legal force is still hampered in the execution process. Normative legal research is a scientific research procedure to find the truth based on the logic of legal scholarship from the normative side. This type of research does not recognize field research because what is being researched is legal materials so that it can be said as; library based, focusing on reading and analysis of the primary and secondary materials. Researchers in this study used a case approach. The case approach in normative research aims to study the application of legal norms or rules carried out in legal practice, especially regarding cases that have been decided as can be seen in jurisprudence on cases that are the focus of research. The researcher uses a case approach to find out what are the inhibiting factors for the execution of the object of the case.

Types and Sources of Data

The source of data used in this study is secondary data, namely data obtained by researchers from library research and documents, which are the results of research and processing of others, which are already available in the form of books or documents that are usually provided in libraries, or privately owned. In legal research, secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials. Secondary data used in this study, which consists of:

- a. Primary Legal Materials are obtained through regulations that can be used as a rationale: Civil Code; Civil Procedure Law (HIR, RBG and RV) and Book II MA on Guidelines for Execution in District Courts Decision of the Tobelo District Court Number 11/Pdt.G/2011/PN.TBL in the Case of Land Ownership without rights, consisting of the plaintiff's heirs Lanae Asiz and the defendant's heirs Tukang Hohakai Tobelo District Court Decision Number 11/Pdt.G/2011/PN.TBL. the plaintiff is Lanae Asiz's heir and the defendant is Tukang Hohakai's heir.
- b. Secondary Legal Materials in the form of legal and non-legal opinions obtained from books, Big Indonesian Dictionary, legal dictionaries, research results, internet, and 2 (two) Tobelo District Court judgements to complete the required data.

Data Collection Techniques

The data collection technique used by the researcher is the library research method, namely library research. Data obtained by researchers from library research and documents, which are the results of research and processing by others, which are already available in the form of books or documents that are usually provided in libraries, or privately owned. Then data collection is determined by the results of a review of documents and library materials that are relevant to the problem under study both from books and data using library materials on problems regarding the implementation of execution (Decision Analysis Number: 11/Pdt.G/2011/PN. TBL).

Data Analysis Techniques

The data analysis technique used in this study is qualitative data analysis, namely from the data obtained and then compiled systematically, then analyzed qualitatively to achieve clarity of the problems discussed. Qualitative data analysis is a research method that produces descriptive data analysis, namely data obtained in writing or verbally as well as real behavior, researched and studied as a whole. After the data analysis is complete, the results will be presented descriptively, namely by telling and describing what is in accordance with the problems studied.

III. RESULT AND DISCUSSION

Law Enforcement Conducted in Executing Executions at the Tobelo District Court About Sitting Case

This case was originally a land ownership dispute case located in Rawajaya Village, Tobelo District, North Halmahera Regency. The Plaintiff stated that based on measurements by the late TUKANG HOHAKAI who was the parents of the Plaintiffs together with the village government as stated in the certificate of ownership rights No. 08/SK/MHT/1970 which covers an area of ± 4 Ha, dated April 8, 1970, which was signed by the Head of Gamsungi Village, M.LOBIUA. In 1984 he died in Gosoma Village, his parents named TUKANG HOHAKAI, his wife named AKESOMU BIDULU, died in 1984 and left a plot of land in a place called Rawa Jaya and left six children as his heirs (Plaintiffs), namely : Matthew Hohakai, Cornelius Hohakai, Korneles Hohakai, Maryanci Hohakai, Yohanis Hohakai, Saul Hohakai.

That a plot of land in a place called Rawa Jaya which is currently under the control of Defendants I to Defendants XXXI which was formerly by the late Tukang Hohakai, the Plaintiff's parents, was loaned to the late Lanae Asiz whose heirs were to Defendants I, and to the late Lapamole who was an expert the heirs are Defendants II with the following limits:

- a. In the north it used to be with Tanah Djoma Tomi now with Eli Wisara and Doni Weflar and Din Labadu;
- b. In the south it used to be with Gabidara Mami, Abas Soekoenoy is now on the road to Kampung Baru;
- c. In the east, it used to be with the beach, now with the people of Kampung Rawa Jaya;
- d. In the west, it used to be Djalal Hohakai's land, now it is bordered by market residents' housing.

In 1966 the late TUKANG HOHAKAI parents of the Plaintiffs had lent the garden land to the late LANAE ASIZ and the heirs were the Defendants I and the late LAPAMOLE and the heirs were the Defendants II but until the parents of the Plaintiffs died in 1984 the land was not returned by the parents, even the Defendants I and Defendants II. The garden land is controlled by the late LANAE ASIZ, parents of Defendants I and LAPAMOLE parents of Defendants II since 1966 until now they still control illegally and against the law even though the Plaintiffs have properly warned the Defendants I and the Defendants II in order to return the land under control, but for no apparent reason the Defendants I and Defendant II continue to maintain even though they have no rights and even have secretly transferred/sold together to Defendants III to Defendant XXXI without being

noticed by the the Plaintiffs as legitimate land owners (Tobelo District Court Decision Number: 11/Pdt.G/2011/PN.Tbl)

IV. CONCLUSION

Execution is the final stage of a series of civil case processes in which the judge's decision becomes a reference in the process of carrying out civil executions in which there are rights and obligations of a person or party in a disputed case. A court decision becomes meaningless if it cannot be implemented. that this decision cannot be executed due to resistance to the object by a third party or the defendants/respondents. There were also executions that were hampered because when the execution confiscation was about to be placed on the object of the case, it turned out that the object of the case had changed hands to a third party due to the National Land Agency (BPN) continuing to process the transfer of names or the issuance of a new certificate on the object of the dispute. Upon the request for execution, a third party who also feels that they have the right to the object of the dispute then submits another rebuttal or resistance to the execution.

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