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Execution Of Court Decisions Against Land Cases

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ABSTRACT

The execution of land cases that have permanent legal force is the embodiment of the value of justice and legal certainty. All parties must actually respect and and implement both litigants and related third parties. A court decision that has been legally enforceable must still be viewed as a truth, because it must be respected and conscientiously implemented as a moral responsibility and legal responsibility. Normatively regulated on the implementation of court decisions that have permanent powers both in the environment of the General Court and the State Administrative Court. But at the level of implementation encountered obstacles barriers. The execution of the decision of the District Court on land matters with permanent strength gets obstacles from the losing side.The losing party made various attempts to thwart the execution of the court's decision with a permanent ruling,so that in its implementation it used the help of security forces. Similarly, the court on land matters by the Administrative Court is highly dependent on the goodwill of government agencies or agencies.This happens because there is no coercive institution as well as the decision of a civil case.

INTRODUCTION

Land has a large role in the dynamics of development, then in the Constitution of 1945 Article 33 paragraph 3 mentioned that the Earth and water and Natural Resources contained therein controlled by the state and used for the greatest prosperity of the people .Provisions regarding land can also be seen in the law of the Republic of Indonesia No. 5 of 1960 on the Basic Rules of Agrarian principles or what we usually call the UUPA. The emergence of a legal dispute that stems from a complaint of a party (person/entity) that contains objections and claims for land rights, both on the status of land, priority, and ownership in the hope of obtaining an administrative settlement in accordance with applicable regulations.

The purpose of holding a process before the court is to obtain a judge's decision.The decision of the judge or commonly referred to as a court decision is something that is very desirable or anticipated by the litigants in order to resolve disputes between them as well as possible. This is because the judgment of the disputing parties expects the existence of legal certainty and justice in the case they face.

The realization of a lawsuit that has been granted by the judge is the execution of the court decision as a follow-up procedure, which is the ultimate goal of the litigants. Therefore execution3

is actually an integral part of the implementation of the rules of conduct contained in the Hir or RBG. Meaning4, execution is a series of civil justice system by the public Judiciary, and is outside the dispute process. The law governing execution is part of the Civil Procedure Code located at the end of the process which is basically no longer handled by the judge who decides the case in question. The implementation of the judge's decision, both against the decision has been confirmed to be permanent legal force and not yet permanent legal force such as the decision of UIT voerbaarr bij voorraad and provisionil decision by paying attention to the principle of execution related to the principle of kondemnatoir. Both decisions are either immediate decisions or provision decisions are decisions of civil cases in general, only it has its own uniqueness that is allowed legislation to be executed even though the main case is not or has not been confirmed to be legally valid.

Normatively, the implementation of court decisions including land cases with permanent legal force has been regulated in a restrictive manner both in the Civil Procedure Code and the law of the Republic of Indonesia No. 51 of 2009 on the Second Amendment To Law No. 5 of 1986 on administrative courts,(State Gazette of the Republic of Indonesia year 2009 No. 160. Supplement to the State Gazette of the Republic of Indonesia No. 5079) land matters with legal force must still be prosecuted in order to maintain legal authority. But in practice it is so difficult and convoluted, it requires time, effort and large costs when the object of the dispute is willing to be executed. In the practice of justice and jurisprudence in Indonesia does not work as it should, because of the delay or suspension of execution for various reasons, namely; the reason for the discretion of the chairman of the court, the delay of execution due to Derden Verzet, the delay due to reconsideration, the delay due to the executed land object is not clear boundaries, and the delay due to security reasons, due to humanitarian reasons.

In order for a verdict to be executed, it must contain amar or a dictum of a chondemnatoir character whose characteristic of the verdict there is an order to execute an act as punishment for the defeated party. It is formulated with the sentences: (1)punish or order the "surrender" of an item, (2)punish or order the "vacate" of a plot of land or House, (3) Punish or order the "commission" of a certain Act, (4) punish or order the "cessation" of a certain act and (5) punish or order the "payment" of a sum of money.

Based on the legal issues regarding the postponement or suspension of the execution of the court decision mentioned above, it is clear that there is no general standard used as a legal reference, for the sake of certainty and the value of justice in court proceedings. This is precisely contrary to the general regulatory principles that apply with regard to execution ; namely :(1) any court decision that has permanent legal force has attached executorial Power, (2) Execution of a court decision that has permanent legal force should not be delayed implementation, (3) that can delay execution is only peace in accordance with the affirmation of Article 195 paragraph (1) and Article 224 HIR, or article 206 R.Bg paragraph (1), Article 258 R.Bg

METHOD

The method used in this study is normative juridical approach, namely testing and reviewing secondary data. With regard to the normative juridical approach used, the research is carried out through two stages, namely literature study and field research that is only supporting. Data analysis used is qualitative juridical analysis, namely the data obtained, both in the form of secondary data and primary data analyzed without using statistical formulation.

RESULTS AND DISCUSSION

A. The Past In Review Of Sociology Of The Judiciary. The Concept Of Land Matters

A dispute or conflict arises in principle if there is a demand or demand from one party, while the other party refuses to comply with the demand. The claim or demand is based on the existence of certain rights, but if both parties are silent in the sense of not filing a claim for rights, there will be no dispute or conflict. Therefore the existence of a

claim of Rights is fundamental in a dispute or conflict.

Bagir Manan explained that in the general judicial environment, land disputes rank first compared to other civil cases. Similarly, Zainuddin Mappong that in the data, disputes regarding land in Indonesia is quite high compared to disputes in other fields both at the level of the District Court and who have entered the Supreme Court level, reaching 68%. Rusmadi Murad explained that land disputes are caused by: ownership or control of land that is not balanced and equitable, miserliness or control of agricultural and non – agricultural land, lack of partiality to the people of the weak economic class, lack of recognition of the rights of Indigenous people on land (customary rights) and weak bargaining position of land rights holders in land acquisition.

The emergence of land dispute cases in Indonesia in recent times seems to reaffirm the fact that during the 73 years of Indonesia's independence, the state still cannot provide guarantees of land rights to its people. The new UUPA was limited to marking the beginning of a new era of land ownership that was originally communal developed into individual ownership. Regulation of the Minister of Agrarian and Spatial Planning / head of the National Land Agency of the Republic of Indonesia No. 11 of 2016 on the settlement of land cases distinguish between land cases, land disputes, land conflicts and land cases disngkat Candy ATR/BPN no.11 year 2016 Article 1 Number (1) Candy ATR / BPN No.11 year 2016, " Land case is a dispute, conflict, or land case to obtain a settlement handling in accordance with the provisions of legislation and/or land policy" hereinafter Article 1 point (2) explains, "Land disputes are land disputes between natural persons, legal entities, or institutions that do not have a wide impact."

Meanwhile, Article 1 point (3) explains that land conflicts are land disputes between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have broad impact. While the land case according to Article 1 point (4) is a land dispute whose handling and resolution through the judiciary based on the above description it can be understood that land disputes,land conflicts and land cases are part of land cases. Land disputes do not have a wide impact while land conflicts have a wide impact while land matters are land disputes that have been processed in court. Both land disputes and land conflicts have the opportunity to become land matters when there is no other way to solve them, so it is submitted to the court to get a demanding and fair settlement.

B. Execution of court decisions on Land Matters

The purpose of holding a process before the court is to obtain a judge's decision. The decision of the judge or commonly referred to as a court decision is something that is very desirable or anticipated by the litigants in order to resolve disputes between them as well as possible. Because with the decision of the judge, the parties to the dispute expect legal certainty and justice in the case they face.

In Hir / RBG the sense of execution is the same as the sense of executing the verdict. It is to carry out the decision to carry out the contents of the court decision. The execution of a decision is a forced action with General force carried out by the court to the losing party to carry out a decision that already has permanent legal force. The court / judge is not enough to just resolve the case by passing a decision, but this decision must be implemented or executed, so that achievement is realized as an obligation of the parties listed in the decision. When the court decision has permanent legal force, then the land dispute arising between the parties is declared completed.However, the judge's decision does not have any meaning, if it is not continued with the execution of the decision by the District Court.

Decisions that already have permanent legal force, that is, decisions that are no longer possible to be countered with verset, appeal and Cassation legal remedies . Similarly, in the pelasanaannya must wait until the whole decision has a definite power, even though one of the other parties appeal or Cassation again a land case decision, has no meaning for the party won without execution. Therefore, every judge's decision must be

enforceable or in other words must have executorial power.It is the power to be exercised forcibly by the means of the state. The existence of executorial power in court decisions is because its head reads,"For the sake of Justice Berkatuhanan one God". In principle, only a judge's decision that has permanent legal force can be executed. A decision can be said to have permanent legal force if the decision implies a form of legal relationship that is permanent and definite between the litigants because the legal relationship must be obeyed and must be fulfilled by the defendant but not all court decisions that already have legal force still require forced execution, but only decisions whose dictum is Condenmatoir.

Court decisions that are condenmatoir also do not always have to be implemented by force, but only if the decision is not implemented voluntarily by the convicted party. Whether the verdict is executed voluntarily by the convicted party in accordance with the sound of the verdict dictum, then the case is completed without the need for the assistance of State tools to carry it out. A court decision is intended to resolve an issue or dispute and establish its rights or laws.If the party concerned submits and entrusts the dispute to a court or judge for examination or trial, then this implies that the parties concerned will submit and comply with the decision handed down. The judgment that has been passed must be respected by both parties. Neither party may act contrary to the verdict. So the judge's decision has binding power that is binding on both parties. The Binding of the parties to the verdict gives rise to several theories that would try to provide a basis for the binding force rather than the verdict.

In the theory of material law the binding force of the ruling commonly called "gezag van gewijsde" has the nature of material law because it makes changes to the authority and civil obligations: establish, abolish or amend19. Given that the ruling is binding only on the parties and not on third parties, this theory would be incorrect. Meanwhile, according to the theory of procedural law, the decision is not a source of material law, but a source rather than the authority of the prosesuil. As a result of this decision is procedural law, that is, the creation or abolition of the authority and obligation of the prosesuil. Based on the legal theory of proof, the verdict is evidence of what is stipulated in it, so it has binding power because according to this theory the evidence of opponents to the content of a verdict that has obtained legal force that is definitely not allowed Muhammad Abdul Kadir argues that the decision that has had permanent legal force is a decision, while a decision that does not have permanent legal force is a decision that according to the provisions of the law is still open the opportunity to use legal remedies against the decision, for example, verzet, appeal and Cassation.

A decision is intended to resolve an issue or dispute and establish its rights or laws. This does not mean merely establishing its rights or laws, so that this becomes no exception in any case and case, including in land disputes. Then the parties are obliged to carry out the decision of the judge who has permanent legal force as a law in concrit cases in the field. This is as the implementation of the judge's decision as an Ultimum remedium (last resort) in land disputes. So the purpose of coercion to the execution of a court decision is nothing but the realization of the obligation of the defeated party to fulfill a feat, which is the right of the won party, as stated in the court decision in practice, especially in the Civil Procedure Law, the implementation of this court decision is not as easy as what, a court decision will be difficult to implement if the defeated party does not want to voluntarily obey the decision a unique thing is the placement of the execution is not as an obligation or duty or authority alone, but as a right.

Based on the above explanation, it can be known that the basic philosophy of implementing a judge's decision with permanent legal force is as perwjudahan from the principle of legal certainty and justice as Hope by the litigants. The ruling is still considered to have the value of truth, legal certainty, expediency and Justice Berkatuhanan Supreme. A judge's decision is a legal product that binds the litigants. The willingness of the litigants to submit a legal dispute to the court to obtain a legal settlement, then by itself they have tied themselves to the judge's decision that whatever the judge's decision is binding on the parties and must be enforced.

C. Execution of land case decisions in Civil Justice

The difficulty to implement a decision that already has permanent legal strength in a civil case is because the more often the defendant as the losing party to use the resistance, whether it is the resistance carried out by the execution respondent (geexecuteerde) as a party directly involved in the case or the resistance carried out by the outside party (third party) known as derden verzet.For those who put up resistance, the reason is often used because of dissatisfaction with the court decision.

Based on this, there are several factors that become obstacles in implementing a court decision that has permanent legal force (execution) in the District Court are as follows :

a. Obstacles due to the resistance factor respondent execution (Verzet).
b. Barriers due to resistance by third parties (Derden Verzet)
c. Execution Barriers Due To Reconsideration Factors,
d. Barriers to execution execution due to the Backing factor\Barriers to execution because of the peace between the respondent and the applicant execution execution
e. Barriers to execution for humanitarian reasons.

D. Execution Of Land Case Decisions In The State Administrative Court

The institution of execution as a follow - up to a court decision (gerechtelijke tenuitvoerlegging or execution force) aims to streamline the execution of a decision whose content imposes an obligation (achievement) for the defeated party in court. From the positive legal norms and practices that continue to this day, the issue of execution continues to come to the fore, even becoming a debate between litigants and endless discussions among academics. Especially if the requested to comply with the contents of the court decision is the government who lost the trial process.

When observed, the nature of the Administrative Court execution on land matters is highly dependent on the legal awareness of the body and / or government officials themselves, this is different from the nature of execution in the General Court (District Court). There are some differences with the implementation of a civil case decision in the General Court (District Court), which knows the real execution, while in the Administrative Court is not known the execution of the decision (execution) in real terms,but the execution of the decision made administratively. Here, the defendant himself is burdened with the obligation to carry out a judgment that has permanent legal force (inkracht van gewijsde). The decision of the Administrative Court on land matters that have permanent legal force, is basically a legal decision of a public law nature, so that the decision also has a public law character, which applies not only to the parties to the dispute as well as the inter partes decision, but also applies to parties outside the dispute (erga omnes). Consequently, the dispute that contains equality, which may arise in the future is also bound by the decision. This is different from decisions in civil cases, which generally only apply to the parties to the dispute, although there are also decisions of civil judges that have a public law character. In the Administrative Court, the imposition of forced efforts for government bodies and/or officials is regulated in the provisions of Article 116 paragraph (4) of Law No. 51 of 2009 on the Second Amendment of Law No. 5 of 1986 on the Tun judiciary, which basically states "in the event that the defendant is not willing to carry out court decisions that have obtained permanent legal force, the relevant officials are subject to forced efforts in the form of payment of forced money and/or administrative sanctions". Thus, the forced effort in the Administrative Court consisting of forced money and / or administrative sanctions, in addition to being cumulative or optional, is also an additional punishment or accessoir.

If examined more deeply, the problem of implementing the content of the decision of the Administrative Court in abstracto lies in the norms that regulate it, while in concreto the cause is the non-compliance of bodies and / or government officials to the law. That is, one of the forms of compliance of officials in punishing is to carry out

the content of the decision of the judicial body. The execution of Tun's decision is carried out by registered mail, which is sent by the clerk of the local Tun court by order of the chairman of the court who adjudicates in the first instance no later than within 14 (fourteen) working days. After 60 (sixty) working days the court decision is sent and the defendant does not voluntarily carry out the contents of the decision, the disputed Tun decision has no legal force anymore. What is the problem with not having the legal force of a tun decision, has fulfilled the sense of Justice of the community? Many cases, for example, in the case of Tun's decision to dismantle a building,at the time of the decision of the Administrative Court stating the invalidity of the Tun's official decision, it turns out that the building has been dismantled. And Tun officials do not want to voluntarily carry out the decision of the Administrative Court, then there is an automatic execution after 60 (sixty) working days the decision of the Tun officials does not have legal force. But with this automatic execution, it does not return also the loss of society for the demolition of the building.

The problem of execution legal norms in the administrative court, related to the substance or content of the regulation (legal substance), in this case by observing whether it is in accordance with existing legal principles or theories, so that the legal norm can be effective in its implementation. In contrast to the cause of not carrying out the Administrative Court execution, it can be due to the legal structure (legal structure) that is not clear (in terms of norms), or also due to the reluctance of the body and/or self-government officials who do not implement, that is, it can be because of themselves who do not want to implement (self respect) or conditions outside themselves that may be due to intervention or the content of the decision or even changes in regulations that make the decision can not be implemented (in terms of social or legal culture). At the normative level, bodies and/or government officials who do not want to carry out the execution of the Administrative Court, the provisions of Article 116 paragraph (4) of the Tun judicial Act, which basically states that in the event that the defendant or the body and/or government officials are not willing to carry out judicial decisions that have obtained permanent legal force, the person concerned is subject to forced efforts, in the form of payment of forced money and / or administrative sanctions. The concept, this forced effort is the obligation to pay a certain amount of money (forced money) for the delay in execution imposed on the body and/or government officials either as his office or as a person and administrative sanctions given to the body and/or government officials in their personal capacity.

The idea of the enactment of forced efforts as sanctions against government bodies and / or officials who are not willing to implement the decision of the Administrative Court that has permanent legal force, is in order to streamline the implementation of the decision of the Administrative Court. In other words, the imposition of a forced attempt is an attempt to force a government body and/or official to comply with a verdict. Since the execution was normalized in the Administrative Court in law no. 5 in 1986, there are still many unfinished problems and effective implementation can be applied. Therefore, the legislator in its development revised the special provisions of execution in the Administrative Court. This change, the emphasis is on the provisions of Article 116 of law no. 5 year 1986, which was then revised by Article 116 version of law no. 9 year 2004 and revised again with Article 116 version of law no. 51 of 2009.

Ironically, in its course, the norms of execution are already quite heavy set out in the provisions of Article 116 of Law No. 9 of 2004 fared the same as the previous law (Law Number 5 of 1986), which can not be implemented properly or tend to be less effective. The development, the legislator then wants a revision of the execution norms in the Administrative Court, to be more sharpened and obeyed by the bodies and/or government officials. The existence of dynamics in the discussion, it is clear that the problem of execution in the Administrative Court on land matters is not an easy thing to be solved. This is proven by the regulation of the norm of tiered execution and forced execution, even publication through the mass media in two previous laws (Law No. 5 of 1986 and law no. 9 of 2004) is still

considered less effective, there is even a tendency to harass the judiciary, because it turns out there are still many bodies and/or government officials who do not want to implement the contents of the Administrative Court's decision that has permanent legal force.

If you look at the norms of the execution law provided for in Article 116 of the Tun judicial act, especially regarding forced attempts, it does not reflect the existence of legal certainty. In the absence of legal certainty, then the execution in the Administrative Court on land matters that have legal force remains floating, like unstoppable running water and uncertain direction. Such conditions, contrary to the principle of lytis finiri oportet. Implicitly, this principle wants an end to the existence of government administrative disputes, namely in the form of Administrative Court decisions implemented by government agencies and/or officials. The purpose of this principle is in line with the existence of legal certainty. With the lack of clarity and the absence of legal certainty in the execution norm regulated by the provisions of Article 116 of the Tun judicial law, according to the authors of this norm is contrary to the principle of legal certainty. Therefore, there is a need for a revision of this provision

CONCLUSION

The difficulty of implementing a decision that already has permanent legal strength in a civil case is due to the increasing frequency of the losing party to use resistance, whether it is resistance carried out by the respondent of execution (geexecuteerde) as a party directly involved in the case or resistance carried out by an outside party (third party) known as derden verzet.For those who take the fight, the reason is often used because of dissatisfaction with the court decision At the normative level, government bodies and/or officials who do not want to carry out the execution of the Administrative Court on land matters of permanent strength, the person concerned is subject to forced efforts, in the form of payment of forced money and/or administrative sanctions. The concept, this forced effort is the obligation to pay a certain amount of money (forced money) for the delay in execution imposed on the body and/or government officials either as his office or as a person and administrative sanctions given to the body and/or government officials in their personal capacity. But in practice it is difficult to implement, because there is no coercive institution,

REFERENCES

Abdullah, Rozali, *Hukum Acara Peradilan Tata Usaha Negara*, PT. Raja Grafindo Persada, Jakarta, 2005,

Achmad Rubaie, *Politik Hukum Pembebasan Tanah Untuk Kepentingan Umum*, Bayu Media Publishing, Malang, 2006.

Bachar, Djazuli, *Eksekusi Putusan Perkara Perdata, Segi Hukum dan Penegakan Hukum,* Cetakan Pertama, Akademika Pressindo, Jakarta, 1987,

Effendi, Bachtiar, *Pendaftaran Tanah Di Indonesia dan Peraturan-Peraturan Pelaksanaannya*. Alumni, Bandung. 1983.

Hadjon, Philipus M.*, Perlindungan Hukum Bagi Rakyat di Indonesia*, Bina Ilmu, Surabaya, 1987,

Hamidi, S Gayo, A Sitompul. (2021). Juridical Analysis on The Procurement Of Goods/Service Of The Government To Realize Good Governance (Research Studies In The Department Of Human Settlement and Layout Batam City). International Journal Of Research and Review 8 (11), pp.63-77.

Harahap, M. Yahya, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Edisi Kedua, Cetakan Kelima, Sinar Grafika, Jakarta, 2010,

Harsono, Boedi *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya*, Djambatan, Jakarta, 1999.

Indroharto, *Usaha Memahami Undang-Undang Peradilan Tata Usaha Negara*, Buku II, Beracara di Pengadilan Tata Usaha Negara, Sinar Harapan, Marbun,Jakarta, 1983,

Lotulung, Paulus Effendi, *Hukum Tata Usaha Negara dan Kekuasaan*, Penerbit Salemba Humanika, Jakarta, 2013, p. 139.

Makarao, Moh. Taufik, Pokok-pokok Hukum Acara Perdata, cet. I, (Jakarta: PT. Rineka Cipta,

2004), *Pandang Praktis Hukum*, Rajawali, Jakarta.1983 Persada, Jakarta,1998,

Poesoko, Herowati *Dinamika Hukum Parate Executie, Objek Hak Tanggungan,* Edisi Revisi, Aswaja Pressindo, Sleman – Yogyakarta*, 2013,*

Prodjohamidjojo, Martiman, *Hukum Acara Pengadilan Tata Usaha Negara*, Ghalia Indonesia, Jakarta, 1993,

Rasaid,M. Nur, Hukum Acara Perdata, cet. III, (Jakarta: Sinar Grafika Offset, 2003),

Setiadi, Wicipto *Hukum Acara Pengadilan Tata Usaha Negara,* Raja Grafindo

SF *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*, FH UII Press, Yogyakarta, 2011, Sinar Grafika, Jakarta, 2002,

Sitompul, A, P Hasibuan, M Sahnan. (2021). The Morality Of Law Enforcement Agencies (Police, Prosecutor's Office, KPK) In Money Laundering With The Origin Of The Corruption. European Science Review 9 (10), pp.55-63.

Sitompul, A. (2020). The Criminal Replacement Of Fine In Law Of Money Laundering Number 8 Of 2010 (Case Study In North Sumatera). International Journal Of Creative Research Thoughts, 8 (11).

Sitompul, A., & Sitompul, M. N. (2020, February). The Combination Of Money Laundering Crime With The Origin Of Narkotics Crime To Islamic Law. In Proceeding International Seminar of Islamic Studies (Vol. 1, No. 1, pp. 671-681).

Tauchid, *Masalah Agraria*, Djambatan, Jakarta, 1988, Tjakranegara,,R. Soegijatno *Hukum Acara Peradilan Tata Usaha Negara di Indonesia,*