

## **Review Of The Execution Of The Decision Of The Lubuklinggau State Court Number 15/Pdt.G/2018/Pn Llg**

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### **ABSTRACT**

In 2018, there was a lawsuit filed by Asbiati and Murisa Binti Nang Agus as the Plaintiffs against PT. Buana Sriwijaya Sejahtera (PT. BSS) as Defendant I, Plantation Cooperation of Tritunggal Jaya as Defendant II, Regent of Musi Rawas Utara as Defendant III, and Village Head of Biaro Lama as Co-Defendant that was submitted to the Lubuklinggau District Court and had been decided in Decision Number: 15/ Pdt. G/2018/PN.Llg In the course, this decision could not be executed. This study discusses the reasons for the Lubuklinggau District Court Decision Number 15/Pdt.G/2018/PN.Llg which has permanent legal force (*inkracht van gewijsde*) cannot be executed, as well as discussing the obstacles to the execution of the Lubuklinggau District Court Decision Number 15/Pdt.G/2018/PN.Llg. Execution is the implementation of a Court Decision which has permanent legal force (*in kracht van gewijsde*) which is carried out forcibly by the District Court where the parties file a lawsuit caused by the losing party in the case rejecting to comply with and to carry out the Court's Decision. The approach used in this study was a normative juridical approach. This study used secondary data obtained from primary and secondary legal materials. The results of this study describe a decision that cannot be executed because there is no argument in the Plaintiffs' lawsuit that places a confiscation of collateral (*conservatoir beslaag*), and confiscation of execution (*excektorial beslaag*) for a decision that has permanent legal force (*inkracht van gewijsde*), so that the decision does not have executive power. While the obstacles that arise are in the form of the absence of a time limit that serves as a guide for the Head of the Lubuklinggau District Court to carry out and determine an execution of a decision, and the resistance by the executed party who does not want to voluntarily carry out the contents of the judge's decision.

**Keywords;** Execution; Decision; Permanent Legal Force

### **INTRODUCTION**

#### **Background of the Study**

In line with the spirit of the government of the Republic of Indonesia in protecting and preventing land conflicts and legal certainty of land

rights in the community, the Government issued Government Regulation Number 24 of 1997 concerning Land Registration as a substitute for Government Regulation Number 10 of 1961. This is based on the

provisions of Article 19 of the Basic Agrarian Law which states:

- 1) To ensure legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions stipulated in a Government Regulation.
- 2) The registration referred to in paragraph (1) of this article includes:
  - a. mapping and land bookkeeping measurements;
  - b. registration of land rights and the transfer of such rights;
  - c. the provision of letters of proof of rights which serves as a strong means of proof.
- 3) Land registration is carried out by taking into account the state and community conditions, the need for socio-economic traffic and the possibility of its implementation, according to the consideration of the Minister of Agrarian Affairs.

The principle of guaranteeing legal certainty which is found in Article 19 Paragraph (1) of the Basic Agrarian Law states: "To guarantee legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions stipulated in government regulations".<sup>1</sup>

Land ownership conflicts still occur even though the government has tried to protect it by making legal instruments, such as the last resort to

prove who owns the land is to file a lawsuit to the Court. In 2018, there was a lawsuit filed by Asbiati and Murisa Binti Nang Agus as the Plaintiffs against PT. Buana Sriwijaya Sejahtera (PT. BSS) as Defendant I, Plantation Cooperation of Tritunggal Jaya as Defendant II,

Regent of Musi Rawas Utara as Defendant III and Village Head of Biaro Lama as Co- Defendant that were filed at the Lubuklinggau District Court and registered with Case Number 15/Pdt. G/2018/PN LLG. The basis for this lawsuit is related to the ownership of plasma oil palm plantations managed by PT. Buana Sriwijaya Sejahtera, where the Plaintiffs are participants in the Plasma Ownership of Oil Palm Plantations which was built by Defendant I with the location of the Oil Palm Development area covering Karang Dapo Sub-district, Karang Dapo Village, Biaro Lama, and Aringin Village of Karang Dapo District, Mandi Angin Village of Rawas Ilir District, and Jadi Mulya Village of Nibung District of Musi Rawas Utara Regency, based on the Decree of the Regent of Musi Rawas Utara Number: 100/153/KPTS/IMRU/2014 concerning Determination of the Names of Plasma Participants Owning Coconut Plantations Palm oil built by PT. Buana Sriwijaya Sejahtera in the Villages of Rawas Ilir, Nibung and Karang Dapo districts on October 3, 2014.

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<sup>1</sup> Rudi Indra Jaya, Emelia Kontesa, Rizkika Arkan Putra Indrajaya, *Pengantar Hukum Agraria Teori dan Praktik*, First Printed, Refika Aditama, Bandung, 2020, p.13

In the interests of the Plaintiffs, they must file a lawsuit with the local District Court, to restore their rights so that they are not arbitrarily oppressed by other legal subjects. The lawsuit will result in a Decision. Court products are broadly divided into two, namely Decisions and Stipulations. A decision is a statement (which is set forth in written form) by a judge as a state official who is authorized to do so, and is pronounced in court and aims to end or resolve a case<sup>2</sup>, while determination

(beschikking) is a court decision on a case of application (volunteer). This application is in the unilateral interest of the applicant which does not contain disputes with other parties, for example the determination in cases of marriage dispensation, marriage permits, *adhal* guardians, polygamy, guardianship, marriage *itsbat*, and so on.

Based on the Lubuklinggau District Court Decision 15/Pdt.G/2018/PN LLG which partially granted the Plaintiffs' claim, and sentenced Defendant I to return the land in question, this has become a legal issue raised in this thesis.. The focus was about the Plaintiffs' plasma land ownership in PT. Buana Sriwijaya Sejahtera in Musi Rawas Utara Regency,

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<sup>2</sup> Elza Syarief, *Praktik Peradilan Perdata Teknis dan Kiat Menangani Perkara di Pengadilan*, First Printed, Sinar Grafika, Jakarta, Desember 2020, P.1.

which resulted in land owners suffering losses due to not paying the bailout funds to those who were entitled.

Until this research was written, the fact was that the Lubuklinggau District Court Decision Number 15/Pdt.G/2018/PN Llg, was not obeyed and implemented by the Defendants as the losing party (not executed) even though it was in accordance with the provisions of Article 200 Paragraph (1) HIR , Article 218 Paragraph (2) Rbg, and Article 1033 of the Regulation of *de Rechtsvordering* (RV) which includes handing over, emptying, dismantling, sharing, and doing something.

This research was focused on the problem of not implementing the Lubuklinggau District Court Decision which has been accepted by the Parties and has permanent legal force so that it was detrimental to the Party that has been declared winning as stated in this decision, so the writer was interested in reviewing the execution of Decisions that are not implemented and are not adhered to by the parties in accordance with the applicable laws and regulations. Therefore, that the writer arranged this scientific journal entitled: **REVIEW OF THE EXECUTION OF THE DECISION OF THE LUBUKLINGGAU STATE COURT NUMBER 15/PDT.G/2018/PN LLG.**

## Identification of the Problems

Based on the facts above, the identification of the problem in this research was: what are the obstacles to the execution of the Lubuklinggau District Court Decision

Number15/Pdt.G/2018/PN. LLG?

## RESEARCH METHOD

The research method used in this research was a normative juridical research method. Furthermore, according to Peter Mahmud Marzuki, "Legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer legal issues faced<sup>3</sup>.

### Research Types and Approaches

The type of research in this thesis was literary or library research, meaning a study by examining books or books related to this thesis from the library (library materials). In this thesis, the approach used was a qualitative approach, by examining the problem on a case-by-case basis.

### Research Material Source

The research in this thesis was based on secondary data sources. Secondary data is data in the form of library materials that have been

documented, ready to serve, ready to be used, and not bound by time and place.

## Legal Material Analysis Method

This study uses data analysis techniques with deductive logic, deductive logic or processing legal materials in a deductive way, namely explaining something general and then drawing it into a more specific conclusion.

## RESEARCH RESULTS AND DISCUSSION

The implementation of decisions that have permanent legal force can be carried out in two ways, namely voluntarily and by force. The judge's decision is carried out voluntarily, meaning that the losing party actually accepts and fulfills the contents of the judge's decision without having to be carried out by the court<sup>4</sup>.

In practice the execution request at the District Court, especially at the Lubuklinggau District Court, that the execution of civil case decisions must first through civil legal procedures. The application is the first step carried out by the winning party, the factors that hinder the execution of the decision are as follows:

### 1. Execution Resistance Respondent's

<sup>3</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, page 35

<sup>4</sup> Adityo Wikanto, Sarudin Yudowibowo Harjono, Eksekusi Riil dalam Perkara Perdata tentang Pengosongan Tanah dan Bangunan Rumah, *Verstek Journal* Vol. 2, 2014, P. 2.

In the decision of the Lubuklinggau District Court Number 15/Pdt.G/2018/PN. Llg who punished the Defendants to pay a sum of money with legal considerations that Defendant I had committed an unlawful act by not paying the money that was the right of the Plaintiffs where the money had actually been disbursed by Defendant I where by Defendant II namely the Tri Tunggal Jaya Cooperative did not pay to the Plaintiffs so that the Plaintiffs' losses arose, therefore Defendant I certainly did not want to obey the decision of the Lubuklinggau District Court because he felt he had made payments to all plasma members.

The reluctance of the respondent to execute or the party who has been decided by the court to fulfill his obligation to deliver or pay an amount of money and/or what is ordered by the court's decision, it is caused by:

- a. Lack of awareness of the law for the party with the obligation to carry out his obligations or the party requesting the execution.
- b. Psychological factors due to feeling embarrassed because the case at hand is known to the general public

In the judge's consideration, the Defendants have committed an unlawful act, in accordance with the provisions in Article 1365 of the Civil Code, then an unlawful act must contain the following elements:

- a. There is an action
- b. This act is against the law.
- c. There is an error on the part of the perpetrator.
- d. There is a loss for the victim.
- e. There is a causal relationship between actions and losses.

The causal relationship between the actions committed and the losses incurred is a condition of an unlawful act. These elements are cumulative, this means that if one of the elements is not fulfilled then the act cannot be said to be an unlawful act, so that if examined based on these elements, Defendant I and Defendant II have committed an unlawful act.

### **Review Effort**

This extraordinary legal effort can be an obstacle for the Court and the Execution Applicant to carry out the execution process, because even though the decision has permanent legal force, if this effort is carried out it will hinder the execution process, even if it has been executed if the *PK* attempt is won by the *PK* applicant then the object executed

disputes must be returned to the winning party.

Provisions governing the Judicial Review of Court Decisions That Have Obtained Permanent Legal Force. Article 67 of Law No. 14 of 1985 as amended by Law No. 5 of 2004 concerning the Supreme Court states as follows:

"An application for judicial review of a civil case decision that has obtained permanent legal force may be submitted only on the basis of the following reasons:

- a. if the decision is based on a lie or trick of the opposing party which was known after the case has been decided or is based on evidence which is later declared by the criminal judge to be false;
- b. if after the case was decided, decisive evidence was found which at the time the case was examined could not be found;
- c. if something has been granted which is not demanded or more than what was required;
- d. in the event that a part of the claim has not been decided without considering the reasons;
- e. if between the same parties regarding the same matter, on the same basis by the same Court or at the same level a decision has been given that contradicts one another;
- f. if in a decision there is an error of the Judge or a real error.

Furthermore, Article 69 of Law Number 14 of 1985 as amended by Law Number 5 of 2004 concerning the Supreme Court states: "The grace period

for submitting a request for reconsideration based on the reasons as referred to in Article 67 is 180 (one hundred and eighty) days.

### **Execution Fee**

Relates with the request for execution submitted by the plaintiff in a civil case, the next process, if the application has been made by the applicant, and the application is granted, the panel of judges through the Chairperson of the Lubuklinggau District Court summons the parties for their statements to be heard and orders the defendant to pay certain amount money voluntarily.

These costs include summoning police personnel to secure the situation at the time of execution, this becomes the burden of the execution applicant as well as other additional costs.

### **Dispute Object Value to be Executed**

In this decision, the Defendants are sentenced to jointly and severally pay the losses suffered by the Defendants, namely the amount of Rp. 9.900.000.- (Nine Million Nine Hundred Thousand Rupiah), so that the Defendants rely on each other, Defendant I relies on Defendant II and so on so that they feel no need to pay because the value is very small, of course, it can be paid by

Defendant I as a company which should pay a sum of money to the Plaintiffs.

### **The Judge's Decision Does Not Contain Material about Seizure of Guarantee**

#### ***(Conservatoir Beslaag) and Seizure of Execution (Executorial Beslaag)***

This decision does not include the confiscation of the defendants' valuables at all so that this decision does not have the power to confiscate the Defendants' valuables as long as the Defendants do not obey and implement this decision. In practice, based on the provisions of Article 197 Paragraph (1) *HIR*, the assets of the losing party are placed for execution (*executory beslaag*) first, the execution process begins with movable goods. If the movable property is absent or insufficient, then the immovable property shall be confiscated.

If someone is reluctant to voluntarily fulfill the contents of the decision where he is punished to pay a certain amount of money, if before the decision has been made a guaranteed confiscation<sup>5</sup>, then the

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<sup>5</sup> The confiscation of collateral is regulated in Article 22 Paragraph (1) which reads: "if there is a reasonable suspicion that a person who owes a debt before a decision is made to him, or while a decision has been made to him, cannot be carried out, is trying to embezzle or transport his goods, whether it is not fixed, whether permanent, to keep the goods away from the debt collector, the chairman, upon a request letter submitted for that, by an interested person, may give an order for the goods to be confiscated and will safeguard the rights of the person requesting it and to him, it should be notified, that he will appear before the first trial

security confiscation after being declared valid and valuable, automatically becomes an executorial confiscation after the final decision is made. If the Defendants do not implement the provisions of the decision, then the execution will be carried out by auctioning the property of the defeated person so that there is sufficient amount to be paid according to the judge's decision and added with all costs, in connection with the implementation of this decision.

#### **Procedure Obstacles**

The procedure for the execution of a civil decision on the payment of money with collateral and/or confiscated goods has an unregulated period starting from the Execution Application, the request for confiscation of execution, the court order, except at the time of execution by the head of the District Court, which is limited to 8 calendar days under Article 196 *HIR*.

Of course, there are quite a lot of inefficient procedures that will hinder the execution of the decision itself, this is contrary to the principle of a simple, fast, and low-cost trial. This makes the litigants feel disadvantaged if the decision is not implemented.

#### **Institutional Obstacles<sup>6</sup>.**

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that will come from the district court to advance his claim and confirm it."

<sup>6</sup> MA: Eksekusi Perkara Perdata Lebih Berat daripada Memutuskan, <https://national.kontan.co.id/news/ma-eksekusi->

According to Deputy Chief Justice of the Supreme Court for Judicial Affairs, M. Syarifudin, the execution of civil decisions is the duty, responsibility, and authority of the Chief Justice of the First Level Court. He admits that carrying out executions is more difficult than deciding cases. M. Syarifuddin said that "the obstacles are partly due to regulations and the application of regulations that are not yet optimal. Then, the lack of bailiff capacity, Indonesia's geographical conditions, and the compliance of the convicted party to undergo the verdict. In carrying out the execution, it is indeed impossible if it is only entrusted to the court, the state must be present because it has become a legal decision with permanent legal force." Therefore, a collaboration between related institutions such as the Police, and community participation is needed to facilitate the execution of a decision.

## **CLOSING**

### **Conclusion**

These obstacles occur because of resistance by the executed party who does not want to voluntarily carry out the contents of the judge's decision, there is an effort to review which in essence if it is

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perkara-perdata-more-berat-dari-memutuskan  
accessed on June 1 2021.

already executed in the future, the review of the Defendant wins it will be returned what was executed before, the execution fee is sufficiently expensive while the value of money in the decision to be executed is not large in number, there is no judge's decision that contains material on confiscation of guarantees and confiscation of execution, procedural obstacles and institutional obstacles such as the lack of bailiff capacity, distance traveled and so on.

### **Suggestion**

To support and optimize the role of the judiciary in Indonesia, especially about the execution of a decision for legal certainty for justice seekers, it is necessary to make changes and make the Civil Procedure Code under the rapid development of the times, as well as other supporting regulations. so that the execution of court decisions can run quickly, effectively, and efficiently.

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