P-ISSN : 2337-9251
E-ISSN : 2957-9094

JHR

Jurnal Hukum Replik

Volume 10 No. 1 Maret 2022

Published by:
FACULTY OF LAW
UNIVERSITAS MUHAMMADIYAH TANGERANG

DAFTAR ISI

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

LEGAL EFFORTS FOR A RULING OF PERMANENT LEGAL FORCE THAT CANNOT BE EXCECUTED

Dewi Rayati, Firdaus, Danial

Postgraduate Legal Studies Study Program

Universitas Sultan Ageng Tirtayasa

* Correspondence email: dewilawoffice36@gmail.com

ABSTRACT

Court decisions are the final result of disputes, both disputes between citizens and disputes between citizens and the state, but then legal problems arise where decisions that have permanent legal force (Incraht Van gewisje) but cannot be executed so that it has implications for legal uncertainty, and for To get justice and legal certainty for non-executable decisions, there must be legal remedies, therefore the author is interested in making a Legal Journal with the title "Legal Efforts on Decisions with Permanent Legal Forces that cannot be Executed". The research method used is Juridical Empirical, which is a legal research method that focuses on library data or secondary data through legal principles and the suitability of data in the field. In accordance with the approach used, the study was conducted on the norms and principles contained in the secondary and primary data. Based on the results of the discussion and analysis, the following conclusions are obtained: first, non-executable because it does not meet the formal requirements for an executable decision, this can occur as a result of the judge's error/omission and or the fault and negligence of the lawyer The second, non-executable because the state is not able to implement it. The three legal remedies that can be taken are a lawsuit, review.

Keywords: Legal Certainty, Judgement, Non-executable

INTRODUCTION

Indonesia is a state of law. This is reflected in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia of 1945 which expressly states that "the State of Indonesia is a state of law". As a state of law, all aspects in the field of society, nationality, and statehood including government must always be based on the law. Historically, the concept of a state of law appeared in various models, including the state of law according to Islam, the state of law according to the concept of Continental Europe called rechsstaat, the state of law according to the concept of Anglo Saxon (rule of law), the concept of socialist legality, and the concept of the legal state pancasila.

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

According to Gustav Radbruch(Djojorahardjo, 2019), the law must contain 3 (three) identity values, namely as follows:

a. Principle of Legal Certainty (rechmatigheid). This principle is reviewed from a juridical point of view.
b. The Principle of Law (gerechtigheid). This principle is reviewed from a philosophical point of view where justice is the equality of rights for all before the present.
c. Principle of Legal Expediency (Zwechmatigheid or doelmatigheid or utility).

Speaking of legal certainty which is the principle of the State of law, it turns out that the fact for the Court's Decision that has permanent legal force (incraht Van gewisje) there are several court decisions that do not have legal convictions, in this case it is not executable or Non-Executable.

Basically a judge's decision that already has a definite legal force that can be carried out. The exception exists, that is, if a decision is heard with provisions can be implemented first in accordance with Article 180 H.I.R. It should also be stated, that not all who already have definite power must be carried out, because all that needs to be done is *condemnatoir verdicts*, namely those that contain orders to a party to do the deed(Nurjannah, 2017).

Execution is an obligation that must still be carried out by the court as required in Article 54 paragraph (2) of Law No. 48 of 2009 on Judicial Power which states that the implementation of court decisions in civil cases is carried out by clerks and clerks headed by the Chief Justice. While Article 54 paragraph (3) of Law No. 48 of 2009 states that the court's decision is carried out with regard to human values and justice.

So the execution can be carried out if in amar the verdict that the contents punish one of the litigated parties. Basically the execution refers to the amar (*dictum*) court ruling. The executions that the court wants to carry out must not deviate from the verdict. This principle is a benchmark that must be adhered to, so that the execution carried out does not exceed the limits of authority(Mun'amah, 2021). Given the legal

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

uncertainty in the final verdict cannot be executed, the Author is interested in creating a journal with the title "Legal Efforts on Verdicts of Permanent Law That Cannot Be Executed (*Non-Exexutable*)"

METHODOLOGY

The research method used in this study is to use the Emoiris Juridical method which means in this study primary data and secondary data are needed. Empirical juridicality is done by looking at the reality in the field, namely regarding verdicts that have permanent legal force (incraht Van Gewisje) but apparently cannot be executed.

1. Research Specifications

   The specification of the study is an analystical deskriftif, which is research based on several verdicts that are studied so that the verdict that has the legal power remains unable to be executed.

2. Research data sources

   Research sources can be distinguished into research data sources in the form of primary data and secondary data, as well as tertiary legal materials. Primary data in this research is in the form of a court decision that has permanent legal force (incraht Van gewisje). While the secondary data is library materials. The secondary data used consists of:

   a. Primary Legal Materials are legal materials that are bonding consisting of laws and regulations related to the object of research, namely:

      1) The 1945 Constitution,
      2) Law No. 48 of 2009 concerning Judicial Power
      3) Law No. 2 of 1986 concerning The General Judiciary,
      4) Law No. 51 of 2009 on the Second Amendment to Law No. 5 of 1986 on State Administrative Justice, Indonesia,

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

5) Law No. 51 of 2009 on the Second Amendment to Law No. 5 of 1986 on Indonesian State Administrative Justice,

6) Law No. 30 of 2014 on Government Administration,

b. Secondary legal materials are sourced from books, journals, reports, and electronic media that have links to the concepts of state law, discretion, supervision and accountability of public officials.

3. Data collection techniques

This Method of Data Collection in Research uses Library Searching, books, literature, legal journals and related laws and regulations. And the Case Study of some court rulings that have permanent legal force but cannot be executed, which the Author obtained from various General Courts and State Administrative Courts.

4. Research Location

The location of the research because it will be studied is about non-executable verdicts, the author conducts research in several locations, namely,

a. Central Jakarta District Court,

b. Serang District Court,

c. South Jakarta District Court,

d. Central Jakarta State Administrative Court,

e. Post Library of Sultan Agung Tirtayasa University, and

f. Banten Provincial Library.

RESULTS AND DISCUSSION

1. Legal efforts that can be made by the parties related to the Ruling that has the power of law remains but cannot be executed

There are some even many rulings that have had permanent legal force *(Incraht Van Gewisje)* but cannot be executed, which of course is very detrimental to the people who fought for years from the first level, appeal level, to the level of

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

cassation even to the level of review, the case was won but at the end could not be executed. It's obviously very damaging to people who are fighting for justice.

The condition for being able to be executed a verdict is according to Yahya Harahap that only verdicts that are "*condemnatoir*" can be executed, namely verdicts whose amar or dictum contains elements of "punishment". Verdicts whose amar or dictum contain no punitive, unenexable or *"Noneksekutable" elements*.(Harahap, 2007)

The characteristics of the *condemnatoir verdict*, in the Execution Manual in the District Court are stated as follows:

a. Punishing or ordering the "surrender" of an item.
b. Punish or order the "emptying" of a piece of land or house
c. Punishing or ordering "dismantling" a wake-up
d. Punish or maintain "doing" an act, (example of inheritance division).
e. Punish or order the "cessation" of an act or circumstance.
f. Punish or order the "payment" of a sum of money.

The verdict that should be comdemnatoir but turns out to be not condemnatoir or no amar dictum "punishment" can occur due to the error / other reason of the judge, or because of the error/other party litigant, lawyer.

In addition, there are also those who become non-executive even though in the amar the verdict has been condemnatory but the state is not able to carry it out, usually this is a case that intersects directly with the government, where government officials are negligent in carrying out the verdict.

There are also verdicts that have been condemnatoir or the existence of amar that is enthusuring to do something to the loser but not complete punishment so as to make amar not have a clear and definite legal understanding, this exists because of the error of the judge and also the error of the lawyer.

Based on the above, the Author classifies the Non-executor of the verdict as follows:

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

a. **Non-executor because it does not meet the requirements for the executive verdict, namely:**

1) **Errors/errors of the judge**

That there are several rulings in which the Petitum has been requested / requested to majleis judges clause "Ordered and or punished to surrender", but in a real and clear amar has been granted by the Panel of judges, contradictory to the absence of an order to approve, amar his ruling in question "Uncertainty of the Law"

Obviously in the petition has been asked by the Plaintiff to present the assets controlled by the Defendant to the Plaintiff, but it turns out that the panel of judges in the case of Granting the Lawsuit in other words is to accept what is postulated by the Plaintiff and or Plaintiff can prove the proposition, but on the proven proposition is not followed up with punishment to the party who has done. Thus the Verdict becomes not Condemnatoir, by not condemnatoir then the verdict does not meet the executive requirements.

If faced with such a case where the judge is negligent in making a verdict then in accordance with the book "Guidelines for Execution in The District Court" made by the Supreme Court of the Republic of Indonesia, states "but if in the petitum / lawsuit there is a case of emptying application and the judge neglects to consider then the Plaintiff can submit an extraordinary legal effort review first"(Nurjannah, 2017)

Thus the legal effort against a non-executor verdict due to the negligence of the judge then before applying for execution, the winning party in the case must submit a Reviewer Again.

2) Non-executor due to lawyer errors/errors

Legal efforts that must be made if faced with such a case in accordance with the Execution Manual in the District Court made by the Supreme Court of the Republic of Indonesia in 2019 state: "If in the amar the verdict

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

requested the execution only contains a verdict that is declaratoir or constitutive will certainly be declared non-executive, then if the applicant of the execution will propose execution against the same object verdict, Then the execution applicant must first file a lawsuit with a lawsuit immediately (uitvoerbaar bij voorraad) to the Court that issued the ruling just add to the petition that contains punishment (condemnatoir). The judge must grant with a simple trial process(Nurjannah, 2017).

Thus, the legal efforts that can be made by the winning party but because the error is not included in the penalty lawsuit against the losing party, then the winning Party can file a lawsuit with the District Court where the case is examined, with a lawsuit immediately.

3) Non-executor because the State is unable to carry it out.

4) Non-executor because the Official does not have any intentions.

That in this case the subject of the law is the government in this case the National Land Agency and the Governor of DKI Jakarta. And the legal object that was originally in the form of 16 hectares of land changed based on the Letter of the Head of the National Land Agency (Defendant II) No. 188-V-1990 on the Revocation of the Decree of the Minister of Home Affairs Cq. Director General of Agrarian No. SK.158 / DJA / 1982 dated September 17, 1982 turned into compensation in the form of money.

On the appeal's decision, the Defendant filed a cassation and amar from the cassation verdict the cassation was rejected as well as the Review submitted by the Defendant in the reject as well, thus as the final application is the Verdict at the Jakarta High Court.

If we review the verdict it is said "punish defendant I in casu Punish Defendant I, Defendant II, Defendant III and Defendant IV on a rent basis to pay damages on land owned by the Plaintiffs and other heirs

In accordance with the amar ruling which stated the Defendants for renteng liability can be interpreted as the obligation to pay to the heirs are the National Land Agency And the Governor of DKI Jakarta. If the

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

execution of the inkraht decision is not carried out due to the involvement of government officials in certain institutions such as National Land Agency or judicial institutions then the Government official means that it has been against the law because it does not carry out the court's decision. Moreover, the decision has permanent legal force until the level of review. Because, it is not available in our positive law not to carry out the execution of legal decisions that have permanent legal force. If government officials do not implement it means violating the law and violating the authority.

If the official does not carry out a ruling that has permanent legal force (incraht Van geweisje) can also be interpreted the official against the office order. In government Regulation No. 48 of 2016 on Procedures for the Imposition of Administrative Sanctions to Government Officials. Which this PP is the implementing provision of Article 84 of Law No. 30 of 2014 concerning Government Administration.

In Government Regulation No. 48 of 2016 on Procedures for The Imposition of Administrative Sanctions to Government Officials. Described in article 1 Government Officials are government officials who organize within the scope of executive, judicial, legislative and other government officials who carry out government functions, and in Article 4 stated. Administrative sanctions consist of mild administrative sanctions, moderate administrative saknsi and severe administrative sanctions."

Light administrative sanctions are imposed on government officials if they do not take action. Among other things, not using authority based on laws and regulations or the General Principle of Clean Government. It does not elaborate on the intent, objectives, administrative and financial impacts in using discretion that has the potential to change budget allocations and result in legal consequences that have the potential to burden the country's finances.

Do not submit a written application to the superiors of officials in using discretion that has the potential to change the budget allocation and

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

cause legal consequences that have the potential to harm the country's finances. Do not give verbal and written notices to superior officials in using discretion that causes public unrest, emergencies, urgent and/or natural disasters.

Not providing necessary military assistance in an emergency, not notifying his superiors in the event of a conflict of interest, not notifying the parties concerned for a maximum of 10 working days before making decisions and/or actions in the event that the decision causes sacrifice for citizens unless otherwise stipulated in the laws and regulations.

While administrative sanctions are being given to government officials if they do not get approval from the official's superiors in the use of discretion that has the potential to change budget allocations. Not notifying the superior of the official before the use of discretion and reporting to the superior of the official in the event of the use of discretion causes public unrest, emergencies, urgency, and / or natural disasters. Not carrying out legitimate decisions and/or actions and decisions that have been declared invalid or overturned by the court or the relevant officials or superiors concerned.

For severe administrative sanctions are given to government officials if they abuse authority that exceeds their authority, mix up authority and/or act arbitrarily. Then establish and or make decisions or actions that have the potential to have a conflict of interest and violating provisions that cause losses to the country's finances, national economy or damage the environment.

Mild administrative sanctions include verbal reprimands, written reprimands and delays in promotions, classes and rights of office. While administrative sanctions are in the form of forced payment of money or compensation, temporary dismissal by obtaining the rights of office as well as temporary dismissal without obtaining the rights of office.

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

While for severe administrative sanctions the punishment includes permanent dismissal by obtaining financial rights and other facilities. Permanent termination without obtaining financial rights and other facilities. Permanent dismissal of permanent dismissal by obtaining financial rights and other facilities and published in the mass media. In addition, the dismissal remains without obtaining financial rights and other facilities and is published in the mass media.

According government regulations, the superior of the official is an official who is authorized to impose administrative sanctions on government officials suspected of administrative violations. In the event of administrative violations committed by regional officials, the authorized official imposes administrative sanctions, namely the regional head. While in the event of administrative violations committed by officials in the ministry / institution, the official who is authorized to impose sanctions is the minister / head of the institution.

"In the event that administrative violations are committed by the regent / mayor, the competent authority imposes administrative sanctions, namely the governor. In the event that administrative violations are committed by the governor, the competent authority imposes administrative sanctions, namely the minister who organizes internal government affairs. In the event that administrative violations are committed by the minister, the competent authority imposes administrative sanctions, namely the President," said Article 12 paragraph (4,5,6) of the government regulations.

Affirmed in this government regulations, in the event that the official who is authorized to impose administrative sanctions does not impose administrative sanctions on government officials who commit violations, then the authorized official is subject to administrative sanctions by his superiors. The sanctions as intended are the same as the type of administrative sanctions that should be imposed on government officials who commit administrative violations.

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

If we associate the government regulations with a case of not carrying out land executions by authorized officials then the officials concerned fall into the category of violating the provisions because they do not carry out legitimate decisions and / or actions. He can be subject to administrative sanctions of the category "moderate" with penalties in the form of having to pay forced money or compensation, temporary dismissal by obtaining the rights of office and temporary dismissal without obtaining the rights of office.

In the event that this violation is committed by National Land Agency officials for example, the authorized officials impose administrative sanctions, namely the minister who organizes domestic government affairs. In the event that administrative violations are committed by the minister, the competent official imposes administrative sanctions, namely the President.

The problem is when the state alone in this case National Land Agency does not want to implement legal rulings that have the power of law remains clearly a form of violation and legal resistance. This could set a precedent for abuse of power and abuse of authority. Well, if the state apparatus and institutions alone do not comply with the legal ruling, how can you expect private and non-governmental institutions to obey and obey the law.

Thus the legal efforts that can be made by the winning party in the case against the government is to report back to the superiors of those who make violations and if only it remains not beautiful then according to the Author, the last action as a legal effort by complaining to the House of Representatives through "Integrated Service of Public Complaints and Public Information of the House of Representatives"

Both individuals and groups can submit complaints in writing to the information complaint service room that will be processed and followed up by the Leader of the House of Representatives, the head of the commission to members of House of Representatives.

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

5) The state only wants to carry out some of the contents of the verdict.

The ruling that has binding legal force but turns out not to have legal convictions is when the President of the Republic of Indonesia does not fully implement the decree of PTUN No. 82 / G / 2020 / PTUN-JKT to re-occupy Evi Novida Ginting Manik to become a member of the General Election Commissions, but only issued Presidential Decree No. 83 / P. Of 2020 on the Revocation of Presidential Decree No. 34 / P in 2020.

That the chairman of General Election Commissions Arief Budiman followed up on Presidential Decree No. 83/P. Of 2020 on The Revocation of Presidential Decree No. 34/P of 2020, by issuing General Election Commissions Letter No. 665/SDM.13.SD/05/ General Election Commissions /VIII/2020 dated August 18, 2020 to reactivate Evi Novida Ginting. Which turns out that the actions taken by the chairman of the General Election Commissions have an impact on the reporting / pitting of General Election Commissions chairman Arief Budiman by Jupri to the election organizers honorary council, and on the complaint of Jupri the election organizers honorary council after examining and reviewing also reviewing the actions taken by General Election Commissions chairman Arief Budiman then the election organizers honorary council decided to "dismiss with disrespect Arief Budiman from the Chairman of the General Election Commissions ".

Based on the Authority of the Honorary Board of Election Organizers contained in Law No. 7 of 2017 on General Elections in Article 159 number (2), letter c explains that the election organizers honorary council is authorized to sanction election organizers who are found to violate the code of ethics, and letter d explains the election organizers honorary council is authorized to break violations of the code of ethics(Aldi et al., 2019). Thus the authority of the election organizers honorary council to break violations

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

of the election organizer's code of conduct is in accordance with the mandate of the constitution.

The subject of handling the election organizers honorary council case (subjectum litis) consists of; Complainant and Teradu. About the Complainant mentioned in Article 458 paragraph (1) that is; 1. Election Organizer, 2. Election participants, 3. Campaign team, 4. The community, and/or voters who are equipped with the identity of the complainant to the Election Organizing Honorary Council. While Teradu consists of 3 elements, namely (Purba, 2021);

a) General Election Commissions elements; Members of General Election Commissions, Members of provincial General Election Commissions, Members of General Election Commissions Kab / City, Members of KIP Aceh, Members of KIP Kab / City, Members of the District Election Committee (PPK), Members of the Voting Committee, Members of the Foreign Election Committee, Members of the Voting Organizing Group (KPPS) and Members of the Overseas Voting Organizing Group (KPPSLN);
b) bawaslu element; Bawaslu Members, Bawaslu Provincial Members, Bawaslu Kab/Kota Members, Subdistrict Panwaslu, Village/Village Supervisors, and TPS Supervisors, and Overseas Panwaslu Members;
c) The Secretariat of Election Organizers

The Election Organizing Honorary Councils decision is final and binding. In 2013, the nature of the ruling that was regulated since the Election Organizing Honorary Council still uses Law No. 15 of 2011 on Election Organizers was judicially reviewed in the Constitutional Court (MK) by civil society groups. As a result, through The Decree of Mk No. 31/PUU-XI/2013, the Constitutional Court decided that the final and binding nature of the Election Organizing Honorary Council decision must be interpreted finally and bindingly for the President, General Election Commissions, Provincial General Election Commissions, Regency/City

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

General Election Commissions, and Bawaslu in carrying out the final and binding Election Organizing Honorary Council ruling" It hasn't changed either. This is also stated in Election Organizing Honorary Council Ri Regulation No. 3 of 2017 on Guidelines for The Code of Ethics of Election Organizers in Article 39 number (1) which states the Election Organizing Honorary Council Decision is final and binding.

That there is obviously legal uncertainty in the case of Evi Novida Ginting where it is not done by the state in this case by the President of the Republic of Indonesia amar decision No. 4 which states: Requiring the Defendant to rehabilitate the good name and restore the position of the Plaintiff as a Member of the Election Commission for the 2017 - 2022 term as before it was dismissed, was not done by the President of the Republic of Indonesia.

That by not doing so is rehabilitating the name of Evi Novida Ginting and restoring his position as a member of the Election Commission, due to the hesitation of the President of the Republic of Indonesia in making a decision, and the hesitation is quite reasonable due to the contradictory regulations, where on the other hand the Election Organizing Honorary Council Decision is Final and binding but on the other hand the Jakarta administrative Court Decision granted Evi Novida Ginting's Lawsuit on Presidential Decree No. 34/P. 2020.

Paulus Efendi Lotulung more fully, who stated that a ruling of a permanent legal administrative court (in kracht van gewijsde) has the following juridical consequences:

(1) The decision in question means that the dispute has ended and no other ordinary legal efforts can be pursued by the litigating parties;
(2) The ruling has binding power for everyone (erga omnes), not only binding on both parties to the inter partes as is the case in civil cases;
(3) The ruling is an authentic deed that has the power of perfect proof; and

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

(4) The ruling has an executory power which means that the contents of the verdict can be implemented. In fact, if necessary by forced efforts if the defeated party does not want to carry out voluntarily the contents of the ruling in question.

The mechanism of implementation (executie) of the decision of the state administrative court (administratief rechtspraak van vonnissen) is regulated in Article 116 of Law No. 5 of 1986 concerning the Judiciary of State Administration. Which states:

a) A copy of the Court's decision which has obtained permanent legal force, is sent to the parties by registered letter by the local Registrar of Courts on the orders of the Chief Justice who judges him in the first degree no later than fourteen days.

b) In the event that four months after the decision of the Court which has obtained permanent legal force as referred to in paragraph (1) sent the defendant does not carry out his obligations as referred to in Article 97 paragraph (9) letter a, then the Disputed State Administrative Decree has no legal force anymore.

c) In the event that the defendant is determined to carry out his obligations as referred to in Article 97 paragraph (9) letter b and letter c, and then after three months it turns out that the obligation is not carried out, then the plaintiff submits an application to the Chief Justice as referred to in paragraph (1), that the Court order the defendant to carry out the court's decision.

d) If the defendant still does not want to carry it out, the Chief Justice submits this to his superior agency according to the level of office.

e) The superior agency referred to in paragraph (4), within two months of receiving notification from the Chief Justice shall have ordered the official as referred to in paragraph (3) to carry out the court's decision.

f) In the event that the superior agency as referred to in paragraph (4), does not heed the provisions referred to in paragraph (5), the Chief

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

Justice shall make this to the President as the holder of the highest government power to order the official to carry out the court's decision.

The above provisions, more focused on the implementation (executie) of the verdict with a tiered system or better known as the implementation of hierarkhis. This is because there is the involvement of higher officials or superior officials. In fact, up to the President as the highest responsibility for government power (bestuur).

However, on the basis of the ineffective implementation (executie) of the ruling of the state administrative court with permanent legal force, then in the amendment of the State Administrative Justice Law of 2004, the implementation of hygiene is not maintained and replaced by the provision of forced efforts in the form of the imposition of administrative sanctions and forced money payments (dwangsom) and announcements (publications) in the mass media.

This is stipulated in Article 116 of Law No. 9 of 2004 on Amendments to Law No. 5 of 1986 on State Administrative Justice which reads:

1) A copy of the Court's decision which has obtained permanent legal force, is sent to the parties by registered letter by the local Clerk of the Court on the orders of the Chief Justice who judges him in the first degree no later than 14 (fourteen) days.
2) In the event that 4 (four) months after the judgment of the Court which has obtained permanent legal force as referred to in paragraph (1) is sent, the defendant does not carry out his obligations as referred to in Article 97 paragraph (9) letter a, the Disputed State Administrative Decree has no legal force anymore.
3) In the event that the defendant is determined to carry out his obligations as referred to in Article 97 paragraph (9) letter b and letter c, and then after 3 (three) months it turns out that the obligation is not carried out, the plaintiff submits an application to the Chief Justice as

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

referred to in paragraph (1) for the Court to order the defendant to carry out the court's decision.

4) In the event that the defendant is not willing to carry out the decision of the Court that has obtained permanent legal force, the official concerned is subject to forced efforts in the form of payment of a sum of forced money and / or administrative sanctions.

5) Officials who do not carry out the court's decision as referred to in paragraph (4) are announced to the local print mass media by the Registrar since the non-fulfillment of the provisions as referred to in paragraph (3).

The above provisions are a form of coercion for state administrative bodies/officials who do not carry out judicial decisions voluntarily, in the hope that the implementation (executie) of the ruling of state administrative courts with permanent legal force (in kracht van gewijsde) is effective for the realization of an authoritative judicial body and legal protection for the people runs in accordance with the purpose of establishing the Indonesian legal state.

Paulus Efendi Lotulung stated that although the revision of the provisions of Article 116 is progress in developing legal certainty for the implementation (executie) of a state administrative court decision, the problems that arise in the case of forced payment of money (dwangsom) are as follows:

a) There is a need for a legal product that regulates procedures and mechanisms for the payment of forced money (dwangsom) such as Government Regulation Number 43 of 1991 concerning Payment of Compensation in the State Administrative Court;

b) When can be determined the amount of forced money (dwangsom) to be paid; and

c) To whom the forced money must be charged, whether to the finances of the relevant state administration official or to private officials who are reluctant to implement the decision

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

Because of this, there is no clarity regarding the mechanism for implementing coercive measures in the form of imposing administrative sanctions and payment of forced money (dwangsom). This has resulted in the provisions of Article 116 of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court to be non-executable. In fact, it may be that these provisions only become binding norms and have coercive power as text only (toothless tigers), but do not mean anything when faced with a concrete event.

From a few of the existing problems as in the previous review, it can be seen that there is an urgency for changes to the provisions of Article 116 of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts. Thus, on October 29, 2009 Law Number 51 of 2009 was promulgated concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court.

The provisions of Article 116 are one of the provisions that were amended in the second amendment in 2009. The provisions of Article 116 in the second amendment in 2009 are as follows:

(1) A copy of the court's decision which has obtained permanent legal force, shall be sent to the parties by registered letter by the local court clerk at the order of the head of the court that tried him in the first instance no later than 14 (fourteen) working days.
(2) If after 60 (sixty) working days the court's decision which has obtained permanent legal force as referred to in paragraph (1) is received by the defendant not carrying out his obligations as referred to in Article 97 paragraph (9) letter a, the disputed state administrative decision is no longer has legal force.
(3) In the event that it is determined that the defendant must carry out the obligations as referred to in Article 97 paragraph (9) letters b and

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

c, and then after 90 (ninety) working days it turns out that these obligations have not been carried out, the plaintiff shall submit an application to the chairman of the court as referred to in paragraph (1). paragraph (1), so that the court orders the defendant to implement the court's decision.

(4) In the event that the defendant is not willing to implement a court decision that has permanent legal force, the official concerned shall be subject to coercive measures in the form of forced payment of a sum of money and/or administrative sanctions.

(5) Officials who do not carry out court decisions as referred to in paragraph (4) are announced in the local print mass media by the clerk since the provisions as referred to in paragraph (3) are not fulfilled.

(6) In addition to being announced in the local printed mass media as referred to in paragraph (5), the chairman of the court must submit this matter to the President as the holder of the highest government power to instruct the official to carry out the court's decision, and to the people's representative institution to carry out the supervisory function.

(7) Provisions regarding the amount of forced money, types of administrative sanctions, and procedures for the implementation of forced payments and/or administrative sanctions are regulated by laws and regulations

The provisions of Article 116 in the second amendment in 2009 seem to provide an article formulation that combines the old Article 116 in Law Number 5 of 1986 concerning State Administrative Courts with Article 116 of the first amendment to Law Number 9 of 2004 concerning Amendments to Law - Law Number 5 of 1986 concerning State Administrative Court. This is very clearly seen in the provision of paragraph (6) which makes the President as the last pedestal to be able to order officials who are charged with the obligation to carry

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

out the decisions of the state administrative court which have permanent legal force (in kracht van gewijsde).

This provision is a characteristic of hierarchical execution which was originally regulated in the old Article 116 of 1986, although not in stages through superior officials, but it still burdens the President as the person in charge of the highest government affairs to order officials who are burdened with the obligation to carry out decisions of the state administrative court with the power permanent law (in kracht van gewijsde).

In addition, the application of coercive measures in the form of imposing administrative sanctions and payment of forced money (dwangsom) as well as announcements (publications) in the mass media which was originally a substitute for hierarchical executions as regulated in Article 116 of the first amendment in 2004 is still maintained in Article 166 of the second amendment in 2009. However, additional provisions regarding the mechanism for imposing administrative sanctions and forced payment of money (dwangsom) are given which in paragraph (7) gives orders to be further regulated (delegated legislation) through statutory regulations. However, as of the writing of this thesis, there is no implementing regulation that regulates the amount of forced money, and the procedure for its implementation.

As mentioned earlier, the application of coercive measures can only be imposed on decisions that are condemnatory in nature or decisions that impose an obligation on the losing party to carry out something. In the context of the decision of the state administrative court, the imposition of obligations is imposed on state administrative officials when the plaintiff's claim is granted by the panel of judges and in its decision the panel of judges imposes an obligation on state administrative officials to do something, for example issuing state administrative decisions (beschikking) either to replace the old decision or to issue a decision that was not originally published. This is confirmed in the provisions of Article 97

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

paragraph (8) and paragraph (9) of Law Number 5 of 1986 concerning the State Administrative Court as follows:

a) In the event that the lawsuit is granted, the Court's decision may determine the obligations that must be carried out by the State Administration Agency or Official who issues the State Administrative Decision.
b) The obligations as referred to in paragraph (8) are in the form of: a. revocation of the relevant State Administrative Decree; or b. revocation of the relevant State Administrative Decree and issue a new State Administrative Decree; or c. issuance of a State Administrative Decision in the event that the lawsuit is based on Article 3

From these provisions, it can be seen that if state administrative officials do not carry out any of the above obligations, they may be subject to coercive measures in the form of administrative sanctions, forced payment of money (dwangsom) and/or announcements (publications) in the mass media.

Considering the basic rules that have been clearly outlined above, the author reiterates that if there are state officials who do not want to implement the decision, the first step is:

(1) The Plaintiff submits to the Chairman of the State Administrative Court that hears and examines the case to instruct the Defendant to implement the decision.
(2) If the Defendant still does not want to, then the chairman of the Court submits again to his superior agency according to the level of his position.
(3) The superior agency as referred to in paragraph (4), within two months after receiving notification from the Head of the Court, must have ordered the official as referred to in paragraph (3) to implement the decision of the Court.
(6) In the event that the superior agency as referred to in paragraph (4) does not heed the provisions as referred to in paragraph (5), the Chairperson of

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

the Court shall submit this to the President as the holder of the highest government power.

CONCLUSION

Decisions that cannot be executed because they do not meet the formal requirements of the executive decision are if due to the judge's error, judicial review is carried out and if due to an error in making the petition (lawyer's fault) then the legal remedy is to file a lawsuit again with a lawsuit immediately and the judge adjudicates with The judiciary is simple, while for decisions where the state does not want or does not want to carry out an executable decision, the last resort is to make a complaint to the House of Representatives.

Considering that there is a decision that has permanent legal force but is non-executable due to the judge's error, if it becomes an input for judges to be more careful in giving and or declaring decisions, and for lawyers in making petitions, lawyers must understand and study so that they master the format of the lawsuit. and be careful in submitting the petition.

Given the non-executable decisions due to state officials who do not have good intentions, the sanctions should have been clearly stated in Government Regulation no. 48 of 2016 concerning Procedures for Imposing Administrative Sanctions to Government Officials and the procedures for procedures contained in Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts can be applied in real terms in government

BIBLIOGRAPHY

Aldi, J. A., Tanbun, E. P., & Nugraha, X. (2019). Tinjauan Yuridis Kewenangan

Dewan Kehormatan Penyelenggara Pemilu (DKPP) Dalam Menciptakan

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 1 (2022)
Submit:08-Jan-2022 Revised:05-Apr-2022 Published:09-Apr-2022

Pemilu Yang Demokratis Di Indonesia. *JURNAL HUKUM DE RECHTSSTAAT*, *5*(2), 137–103.

Djojorahardjo, R. H. (2019). Mewujudkan Aspek Keadilan Dalam Putusan Hakim Di Peradilan Perdata. *Jurnal Media Hukum Dan Peradilan*, 88–100.

Habibi, D., & Nuryani, W. (2020). Problematika Penerapan Pasal 116 UU Peratun Terhadap Pelaksanaan Putusan PTUN. *TIN: Terapan Informatika Nusantara*, *1*(5), 300–304.

Harahap, M. Y. (2007). *Ruang lingkup permasalahan eksekusi bidang perdata.*

Mun'amah, M. (2021). *Implikasi Sistem Eksekusi Terhadap Keadilan Pelaksanaan Putusan Biaya Pemeliharaan/Nafkah Anak Di Pengadilan Agama Parepare* [PhD Thesis]. IAIN Parepare.

Nurjannah, N. (2017). *Tinjauan Sosiologi Hukum terhadap Eksekusi Putusan Perdata* [PhD Thesis]. Universitas Islam Negeri Alauddin Makassar.

Purba, A. M. (2021). Tinjauan Yuridis Terhadap Prosedur Pemilu yang Bermutu dan Berintegritas. *Publik Reform*, *8*(2), 36–44.