



Application of A Judge's Ruled In A Civil Dispute

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Abstract

In 2005, the trial of land grant dispute was held between the Diocese of Amboina as the plaintiff against MR et al. as a defendant in the District Court Tual Southeast Moluccas. This trial was won by the Diocese of Amboina. The defendant then filed an appeal, Cassation and judicial review up to the level of the Supreme Court. Based on the Supreme Court decision no. 166/Pk/year 2010, the panel of judges ruled that the Diocese of Amboina as the legal owner of the land and sentenced the defendant to pay a fine and return the object of dispute without any conditions. Since the issuance of the decision until now, the Diocese of Amboina has not executed the land object, because the Diocese of Amboina has not submitted an application for execution to the District Court in accordance with the provisions of Article 196 HIR due to normative juridical considerations of the church; humanitarian reasons and the urgency of utilizing the object of dispute.. The purpose of this research is to understand the application of Supreme Court decision No. 166/Pk/Pdt / 2010 in dispute over land grant Diocese of Amboina. The author uses normative juridical methods and also through interviews to obtain information as a support in writing this thesis. The result of the research found that decision has permanent force and for the realization of justice and legal certainty for the parties, especially the Diocese of Amboina, the execution action must be carried out immediately in cooperation with the local district court.

1. Introduction

Article 1 Paragraph (3) of the Constitution of the Republic of Indonesia 1945 (hereinafter abbreviated as UUD RI 1945) states that the state of Indonesia is a state of law, affirming the position of law as the basis and guidelines that govern the entire life of the people of Indonesia to protect the rights and obligations of society and for the creation of justice and legal certainty. Article 24 Paragraphs (1) and (2) states that to carry out these purposes the state shall establish institutions authorized as executors of judicial/judicial power, namely the Supreme Court of the Republic of Indonesia and the Constitutional Court of the Republic of Indonesia, which shall be free in exercising their powers without interference or influence of other parties.

The Supreme Court of the Republic of Indonesia is one of the state judicial institutions that exercise judicial power independently, in accordance with its duties

and authorities stipulated in UUD RI 1945 and Act Number 48 year 2009 concerning amendments to Act Number 4 year 2004 concerning judicial power in conjunction with Act Number 14 year 1985 which has been updated by Act Number 3 year 2009 on the Supreme Court. The position of the Supreme Court as the highest institution in charge of judicial bodies is regulated in Article 24 a paragraph (2) of the 1945 Constitution in conjunction with Article 18 of Act number 48 year 2009 which states that, judicial power is exercised by an institution of the Supreme Court (hereinafter abbreviated as MA) which covers 4 (four) judicial bodies under it, namely: general courts, religious courts, military courts, and administrative courts. One of the duties and authority of the Supreme Court as the executor of judicial power in the field of justice in accordance with Article 24 paragraph (1) of Act Number 48 year 2009 on judicial power (hereinafter abbreviated as Act Number 48 year 2009) jo Article 28 of Act Number 14 year 1985 on the Supreme Court (hereinafter abbreviated as Act Number 14 year 1985) is to conduct a review of cases that have permanent legal force applied for review.

In the case requested for review, article 24 paragraph (2) of Act Number 48 year 2009 jo Article 66 Paragraph (1) of Act Number 14 year 1985 states that against the decision of review by the Supreme Court, there can no longer be an attempt to review a second time or can only be submitted 1 (one) time. So based on the position of authority and the nature of the Supreme Court decision as the highest judicial institution of all judicial bodies under it and also considering the provisions of Article 24 paragraph (2) of Act number 48 year 2009 jo Article 66 Paragraph (1) of Act Number 14 year 1985, the decision issued by the Supreme Court after a review is the final and highest decision in the judicial sphere because it has strong legal force (*inkracht van gewisdje*) so that against it can no longer be made a legal attempt to overturn the decision.

In civil cases, the form of application to decisions that have permanent legal force (*inkracht van gewisdje*) is to carry out the execution stipulated in Article 195 Paragraph (1) *Herzien Indonesia Reglement (HIR)* as a concrete manifestation of the application of the decision of the panel of judges who have permanent force. This legal idealism sometimes does not correspond to the reality faced in people's lives. The decisions issued by the judicial institutions even to the level of the Supreme Court decision although it has the force of law still often can not be implemented due to various obstacles faced in the field, especially in matters of land execution ([Harsono, 2013: 176](#)). Problems or obstacles that are often faced by the District Court at the time of execution of land, among others, the resistance of the losing party; execution costs, time and energy as well as humanitarian and security considerations. This led to the issue of how the application of the Supreme Court of the Republic of Indonesia Decision No. 166 Pk/Pdt/2010 in the land grant dispute Diocese of Amboina?

2. Methods

This paper uses the normative legal research method because the focus of the study departs from the blurring of norms, using the approach: statute approach, and

analytical approach. The technique of searching legal materials using document study techniques, as well as the analysis of studies using qualitative analysis.

3. Results And Discussion

Article 1 Paragraph (3) of the Constitution of the Republic of Indonesia 1945 (hereinafter abbreviated as UUD RI 1945) stated that the state of Indonesia is a state of law, affirming the position of law as the basis and guidelines that govern the entire life of the people of Indonesia to protect the rights and obligations of society and for the creation of justice and legal certainty. Article 24 Paragraphs (1) and (2) stated that to carry out these purposes the state shall establish institutions authorized as executors of judicial/judicial power, namely the Supreme Court of the Republic of Indonesia and the Constitutional Court of the Republic of Indonesia, which shall be free in exercising their powers without interference or influence of other parties (Kadir, 2018: 4). The Supreme Court of the Republic of Indonesia is one of the state judicial institutions that exercise judicial power independently, in accordance with its duties and authorities stipulated in the Constitution of the Republic of Indonesia 1945 and Act number 48 year 2009 concerning amendments to Act Number 4 year 2004 concerning judicial power in conjunction with Act Number 14 year 1985 which has been updated by Act Number 3 year 2009 on the Supreme Court.

In 2005, precisely in Tual City, Southeast Moluccas regency, a civil case trial of the Tual District Court was held between the Catholic Church Diocese of Amboina (hereinafter abbreviated as Diocese of Amboina) as a plaintiff against MR, et al as the defendant. The disputed object in this case are 7 (seven) plots of land located in Langgur Village, Kei-Kecil District, Southeast Moluccas regency, which is referred to as the Catholic Church Mission Land of Amboina diocese with an area of 143,465 (one hundred forty three thousand four hundred sixty five) square meters or 14,347 (fourteen thousand three hundred forty seven) hectares whose boundaries are as follows:

- 1) To the south, adjacent to Jalan Dolorosa Langgur;
- 2) North, from wauw utin behind the old dragon warehouse to the East/Beach where the stone is called wat dad;
- 3) West, from Jalan Dolorosa following Jalan Jenderal Sudirman heading north to the corner of the north west wall of SD Mathias I Langgur, then to the east to a place called temar utin and from temar utin heading north to a place called wawu utin behind the old dragon warehouse;
- 4) To the East, it is bordered by the Sea of the Rosemberg Strait to the village of Langgur.

Based on the decision of the Tual District Court Number: 06/Pdt-G/2005/PNTL, the panel of judges granted the plaintiff's lawsuit and stated that the object of the dispute was the plaintiff's property obtained by submission from the ancestors of 10 (ten) clans in Langgur Village. The panel of judges stated that the defendant's actions were unlawful and ordered the defendant to return or hand over the object of dispute to the plaintiff without any conditions. The panel of judges also

sentenced the defendant to pay the cost of the case jointly and severally amounting to Rp. 1.494.000, - (one million four hundred ninety four thousand rupiahs).

The defendant who lost this trial appealed to the Moluccas High Court in Ambon, but the lawsuit was rejected in accordance with the decision of the Moluccas High Court No. 28 / Pdt/2006 / PT. MAL which upheld the decision of the District Court Tual dated February 27, 2006 Number. 06 / Rev.G/2005 / PNTL and punish the defendant / comparator to jointly pay the case on appeal amounting to Rp. 150.000, - (one hundred and fifty thousand rupiahs).

The defendant then filed a cassation appeal with the Supreme Court, but the Cassation application was rejected and the Cassation applicants were sentenced to pay a fine of Rp. 500.000, - (five hundred thousand rupiahs) according to decision number 1793 K/Pdt/2007. The defendant then filed another application for review, but the Supreme Court rejected the application for review and sentenced the applicant to pay a fine of Rp. 2.500.000, - (two million five hundred thousand rupiahs) and ordered the defendant/applicant to surrender the land object belonging to the Diocese of Amboina without any conditions, according to the Supreme Court of the Republic of Indonesia decision No. 166/Pk/Pdt / 2010 (hereinafter abbreviated as Supreme Court decision No. 166/Pk / Pdt/2010).

The facts that occurred, although in the amar decision has stated clearly and firmly that the plaintiff in this case the Diocese of Amboina as the legal owner of the disputed land object and ordered the defendant to return the land object to the Diocese of Amboina without any conditions but until now the execution process has not been carried out according to the amar Court decision.

According to the Big Indonesian dictionary (KBBI), the application comes from the basic word "terap", which means; wearing, pairing, practicing and actualizing, so that the application is understood as the process, way or act of practicing, pairing or actualizing. The word "decision" according to the dictionary of Law and jurisprudence (2007), is a statement of the judge as a state official spoken before the trial to end or resolve a case or dispute between the interested parties. There are two kinds of judgment: the judgment of the righteous and the judgment of the unrighteous (M & Siagian, 2007: 619).

Decisions that have not been fixed are decisions that, according to the provisions of the law, still have the opportunity to use legal remedies against the decision, for example resistance (*verzet*), appeal (*appel*, *appele*) and Cassation (*cassatie*, *cassation*). Decisions that have permanent legal force (*inkracht van gewijsde*) are decisions that, according to the provisions of the law, can no longer be taken legal action against such decisions such as: decisions of the court of first instance that are not requested for re-examination/appeal or Cassation because they have been accepted by the litigants; the decision of the court of Appeal that is not requested Cassation to the Supreme Court; the decision of the court of Cassation of the Supreme Court or judicial review of the Supreme Court; *verstek* decision of the court of first instance that is not filed legal remedies and conciliatory decisions of the two litigants (Muhammad, 1982: 190).

Based on the understanding, it can be concluded that the application of the decision is the actualization or follow-up of the judge's decision in resolving a case in the court in the form of punishment which can be in the form of sentencing, compensation, execution of the object of dispute, or in the form of a free decision or release from all lawsuits in accordance with the provisions of the law and in the amar Court decision.

The Diocese of Amboina is a suffragan Diocese of the Archdiocese of Makassar whose territory covers the entire province of Moluccas and North Moluccas with an area of 78,896 km² and is centered in the city of Ambon, currently the Diocese of Amboina is led by Mgr. Seno Ngutra, Pr. The execution process carried out by the District Court on a decision that has a permanent force must also consider several conditions and principles so that the execution can be carried out, namely:

1) When the decision is not executed voluntarily,

Execution as an act of coercion to carry out a court decision that has legal force, is only a legal option if the losing party does not want to carry out or fulfill the contents of the decision voluntarily in accordance with the provisions of articles 195 and 196 HIR. According to Subekti, execution or execution of a verdict implies that the party defeated in the trial does not want to voluntarily obey the verdict so that the verdict must be imposed on it with the help of legal force (Swantoro, 2018: 22).

2) The execution was led by the chairman of the District Court

The execution of the execution of the decision is under the chairmanship of the chairman of the District Court. The legal basis is regulated in Article 195 paragraph (1) HIR and Article 206 paragraph (1) RBG which states that the execution of the court is carried out by order under the leadership of the chairman of the District Court which is run by the clerk and Bailiff of the District Court.

3) Execution must be in accordance with the amar decision.

The execution carried out by the chairman of the District Court must be in accordance with the Amar decision which is condemnatoir, or in other words the Amar decision is punitive and orders the losing party in the trial to return the object of the dispute (Mulyadi, 2002: 276). Procedures or stages in carrying out the execution as a legal option if one party does not voluntarily submit the object of dispute in accordance with the court decision include: submission of the winning party's request to execute, if the losing party does not voluntarily return the object of dispute, article 195 HIR; anmaning or reprimand from the court on the losing party to immediately submit the object of dispute to the winning party, Article 196 HIR; District Court seizing the execution of the losing party if anmaning is ignored, Article 197 HIR; Article 200 Paragraph (1) HIR and emptying the object of dispute Article 200 paragraph (11) HIR (Swantoro, 2018: 41).

The trial process of land grant dispute between the Diocese of Amboina as a plaintiff against the MR et al., since 2005 until 2010 has ended and based on the Supreme Court decision no. 166/Pk/Pdt / 2010 after a review, the panel of judges

decided that the Diocese of Amboina as the legal owner of the disputed land object. The panel of judges also sentenced the defendant to pay an administrative fine and ordered to return the object of the dispute without any conditions to the Diocese of Amboina.

Article 24 paragraph (2) of Act Number 48 year 2009 jo Article 66 Paragraph (1) of Act Number 14 year 1985 clearly states that against the decision of review by the Supreme Court can no longer be attempted review for the second time or can only be submitted as many as 1 (one) time. This is to confirm the strength of the Supreme Court's decision which has permanent strength (*inkracht van gewisjde*) so that it is mandatory to be obeyed and implemented by the litigants. The Diocese of Amboina as the winning party may apply for execution to the local district court as a continuation of the entire legal process that has been running to obtain its rights as the owner of the object of dispute if the defendant party does not voluntarily return the object.

The Diocese of Amboina, as of the issuance of the decision, has not at all applied to the local district court to execute the object of the dispute even though the facts in the field have proven that the defendant is still buying and selling land without the permission of the Diocese of Amboina after the issuance of the decision. The action not only shows that the defendant did not voluntarily carry out the judge's decision but has committed unlawful acts against land objects that are not his property.

According to information from the C.R. one of the lawyers of the Diocese of Amboina said that the main reason for the execution of the object of the dispute had not been carried out, because the Diocese of Amboina had not ordered them as diocesan advocates to submit an application for execution to the Tual District Court based on the power of attorney given to their side in handling the land dispute from the beginning of the trial to the present.

He also explained that his party had several times proposed this to the Diocese of Amboina and asked for an immediate execution to minimize the problems that would arise in the future. This departs from the observations and information he got that the defendant is still conducting land sales transactions secretly without the knowledge of his party and the Diocese of Amboina.

The same thing happened with N.K. as a team of Advocates Diocese of Amboina. According to him, the reason for the postponement of the execution of diocesan land by the District Court was caused by the negligence of the Diocese of Amboina which was not willing to submit an application for execution to the chairman of the Tual District Court even though the defendant had clearly violated the decision by still conducting a sale and purchase transaction on the object of land owned by the Diocese of Amboina. He wanted the Diocese of Amboina to coordinate with the court to determine the time of execution as well as the form of execution in order to minimize the problems that will occur at the time of execution and also able to accommodate the interests of the Diocese of Amboina.

Based on this fact, the Diocese of Amboina as the injured party should apply for execution to the Local Court to regain control of the object of his estate, but until now

this action has not been carried out. Execution actions in the form of emptying or dismantling are legally mandatory procedures to be carried out because they meet the execution requirements but ecclesiastically these actions are contrary to the principles and duties of the church which prioritizes the spirit of love, solidarity and brotherhood because the execution actions will certainly have a broad and diverse social impact let alone the actions carried out by the Diocese of Amboina on the majority of people who are parishioners who live on the object of dispute. Faced with this issue, of course, the Diocese of Amboina is in a dilemma position between carrying out executions according to lawsuits or remaining guided by the *cura animarum* principle.

The object of dispute located on the territory of the parish of Sta. Virgin Mary Immaculate Heart, Langgur village, Southeast Moluccas Regency and the majority of people who occupied the object of the dispute are Roman Catholics Langgur Parish. Based on the origin of the people who live on the object of the dispute, two groups are distinguished, namely the group of people who have lived on the land long before the decision and the people who live after the court decision in 2010. Economically, the people on the land are classified as Middle-down communities with professions or livelihoods as civil servants, entrepreneurs, hunters; fishermen, and there are also people who do not have a permanent job.

According To P.A mediator priest of the Diocese of Amboina who was served as chairman of the Land Commission of the Diocese of Amboina for the period 2014 - 2017, he said that the execution or emptying of land on the object of the dispute needs to also take into account humanitarian issues because the land has been occupied by so many people, most of them have a lower middle economic level although there are also some who work as teachers, civil servants (ASN) and entrepreneurs. In addition, according to him, the majority of people living on the disputed land are Catholics or also people of the Diocese of Amboina so this needs to be taken into account properly so as not to cause a negative reaction from both the people and other parties to the actions of the Diocese of Amboina as a large and respected religious institution in Maluku province in general and in the Kei Islands in particular.

Based on several reasons presented by the Diocese of Amboina, the author argues that the Diocese of Amboina as a religious institution that adheres to the principles and moral teachings of the church is in a dilemma position between executing the judge's decision to execute or delaying the execution. If the Diocese of Amboina chooses to carry out the court decision, it will deal directly with the majority of the people who are his people who live on the object of the dispute and vice versa if the Diocese of Amboina does not immediately carry out the court decision, other problems will arise that harm it in the future.

The consideration of the Diocese of Amboina to postpone the execution is certainly very reasonable considering its position as a religious institution that is guaranteed its rights as mentioned in Article 27 paragraph (1) of the 1945 Constitution and is also a legal subject (*rechtspersoon*) which is protected by the state

in accordance with Article 1653 to Article 1665 of the Civil Code. The Diocese of Amboina, in addition to being a legal subject protected by the state, is internally a community or communion of the particular church (diocesan) that has the Codex Iuris Canonici or Code of Canon Law as a guide that regulates the entire ecclesiastical way of life. Given this distinctive position, the state should also accommodate the pastoral needs of the Diocese of Amboina wisely in order to realize justice and legal certainty both as a subject of state law as well as in its capacity as an autonomous institution of the particular church.

In the case of this grant land dispute, the author considers that the form of State attention in ensuring and accommodating the needs of the Diocese of Amboina has not been realized optimally. The attention of the state is still limited to resolving disputes in the judicial chamber, although in the decision the Diocese of Amboina declared as the legal owner of the disputed land object according to the verdict of the panel of judges but in reality in the field the Diocese of Amboina still faces obstacles in obtaining their rights. This indicates that the authority and function of the state judiciary to realize justice and legal certainty for the community as if only limited to decision-making in the courtroom and not to the form of its application outside the courtroom.

Faced with this condition, the author considers that the realization of justice and legal certainty in accordance with the lofty ideals of the judiciary as the executor of state power should not be limited only to the formal scope when proceeding at the trial, but can also be realized in more concrete forms so that the benefits of law can be felt directly by the community. The state judiciary should be more active in observing the development of society by making new breakthroughs so as to answer the needs of people who continue to experience development from time to time.

The new breakthroughs referred to by the author are more intended on the proactive attitude of law enforcers in guarding and resolving legal issues outside the trial room to the level of the community that most bring as a form of State concern for its citizens, because often every decision issued in the trial may not necessarily be applied expressly in the field because of the socio-cultural, characteristic and geographical conditions of the diversity of different communities.

The resulting clash of different points of view and principles between church and state law in this case has indicated that any application of a judge's ruling is not necessarily perfectly realizable in practice. The inability of the state's attention to guarding legal decisions in this case can have an impact on the occurrence of legal vacuum which then allows problems to arise for the Diocese of Amboina such as the absence of a firm legal status of disputed land ownership (legal standing) which legally can only be done through execution, moreover the Civil Procedure Code (KUHPerdata) does not specifically regulate the deadline for execution after the decision. So for the author, the District Court as the embodiment of state power needs to cooperate with the Diocese of Amboina to determine policies that can accommodate common interests, among others.

- 1) Given the duties and role of the judiciary in realizing justice and legal certainty for the community, the judiciary needs to also have an integrated arrangement of the judicial system and be able to accommodate the interests of the community in accordance with the provisions of Act Number 48 year 2009 in the section considering letter a jo Circular Letter Number 10 year 2020 concerning the implementation of the formulation of the results of the plenary meeting of the Supreme Court chamber in 2020 as a guide to the implementation of duties for the court (hereinafter abbreviated as SEMA Number 10 year 2020);
- 2) Given the position of the Diocese of Amboina as a subject of law and religious institutions that need to be protected rights so that every policy issued should also accommodate the pastoral needs of the Diocese of Amboina.

Provide legal input and consideration to the parties to exercise their rights and obligations in order to realize justice and legal certainty, especially for the Diocese of Amboina about the terms, procedures and legal consequences that result if the execution is not carried out.

4. Conclusion

The Diocese of Amboina is a religious institution that internally has the position, authority and juridical principles set forth in the Code of Canon Law of the Catholic Church (Codex Iuris Canonici), but externally is a legal subject (natuurlijk person) whose rights and obligations are protected by the state of Indonesia in accordance with Article 27 paragraph (1) and Article 29 Paragraph (1) of the 1945 Constitution. Therefore, as a legal subject, the Diocese of Amboina needs to carry out its obligations by obeying the judge's decision in order to obtain its rights over the object of dispute, and vice versa, the state needs to also accommodate the pastoral needs of the Diocese of Amboina by providing legal assistance and supervision so that the needs of pastoral services can be carried out in accordance with the pastoral principles of the church, namely, in cooperation with local governments to provide relocation land for post-execution communities; ensure safety and smoothness for the Diocese of Amboina during the execution.

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