



Analysis of court establishment as a form of legal effort in the execution process (Case study of the determination of the state court of Banda Aceh number 98/PDT.P/PN. BNA)

Iskandar¹, Darmawan², Mohd Din²

¹ Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

² Lecturer, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

Abstract

The Banda Aceh Corruption Court through the Banda Aceh Corruption Court Decision Number: 57/Pid.Sus/TPK/Pn-BNA which is also a decision that has permanent legal force stating the object of the building is 1 (one) second floor house unit located on the street Prada Utama Prada Village, Syiah Kuala sub-district, Banda Aceh City Belonging to Engineer MAWARDY NURDIN M.Eng on certified land Ownership rights number 2037 was seized for the state. The family of Engineer MAWARDY NURDIN M.Eng submitted an application for the determination of the determination and it has been granted through the Decision of the Banda Aceh District Court Number 98/Pdt.P/Pn. Bna dated July 14 2017 for the object of land and building 1 (one) second floor house unit located on Jalan Prada Utama Prada Village, Syiah Kuala sub-district, Banda City. At the same time, the Banda Aceh District Attorney will carry out the execution of the object of the building. The main problem is whether Determination of the Banda Aceh District Court Number 98/Pdt.P/Pn. Bna dated July 14, 2017 may delay the court's decision which has permanent legal force legal force. This research was conducted normatively juridical method based on bibliographic sources by means of deductive reasoning in leveraging data. Discussion on This research shows and explains that Determination of the Banda Aceh District Court Number 98/Pdt.P/Pn. Bna dated July 14, 2017 will create legal uncertainty in the judiciary continues and it is feared that it will set a new precedent that counterproductive in law enforcement. Study concluded that the order had violated the principle procedural law principles.

Keywords: injunction, excecution

Introduction

The definition of civil cases in a broad sense includes both related and non-disputable civil cases, while the narrow meaning of civil cases are civil cases in which it is certain that there are disputes. Professor Dr. Sudikno Mertokusumo in his book Indonesian Civil Procedure Code states that civil cases include both cases that contain disputes (contentius) and those that do not contain disputes (volunteers) ^[1].

In the practice of civil procedural law, it is stated that cassation is a form of last resort that can be taken by the parties, even extraordinary legal remedies, cannot be executed. Understanding that a decision that has permanent legal force is a court decision that is accepted (no legal action is taken), or if legal action is taken it has been decided by the Supreme Court through a cassation decision ^[2].

Corruption crime case An. The convict Elfina S.E Binti Djakfar in the Banda Aceh Corruption Court Decision Number: 57/Pid.Sus/TPK/Pn-BNA dated April 25, 2016 has stated that the object of the building is 1 (one) second floor house unit located on Jalan Prada Utama Prada Village Syiah Kuala sub-district, Banda Aceh City, Belongs to Engineer MAWARDY NURDIN M.Eng on certified land. Ownership rights number 2037 was seized for the state. The decision, which has permanent legal force, has not yet carried out the execution of the evidence 1 Unit of the second floor house located on Jalan Prada Utama Prada Village, Syiah Kuala sub-district, Banda Aceh City due to the determination of the decision from the same court, namely the Banda Aceh District Court against the evidence. in the decision.

Decision of the Banda Aceh District Court Number: 57/Pid.Sus/TPK/Pn-BNA Bna dated July 14, 2017. The determination contains the following stipulations: Declare that the object of land and building is not the proceeds of the crime of Corruption Crime as referred to in the Decision of the Corruption Court of Banda Aceh Number: 57/Pid.Sus/TPK/Pn-BNA dated April 25, 2016 An. Convict Elfina S.E Binti Djakfar [3]. and Ordered the Banda Aceh District Attorney Cq. The Public Prosecutor of the Banda Aceh District Prosecutor for the Execution of Court Decisions dated June 2, 2017 and issued from the Banda Aceh District Court Number: 57/Pid.Sus-TPK/2015/PN-BNA dated April 25, 2015 A.n The convict Elfina S.E Binti Djakfar ^[4].

The judge's determination can be translated that judicial power is actually a tool for implementing the law which should be the goal of law enforcement. Another problem from the legal considerations of the panel of judges on the issuance of the Banda Aceh District Court Decision Number 98/Pdt.P/Pn.Bna dated July 14, 2017 is that it is

contrary to the applicable procedural law, because in this case the determination is used as a legal remedy to avoid execution of the decision. court that has permanent legal force.

The court ruling as mentioned above is used as a form of legal remedy in the execution process, and moreover it becomes a new trend and pattern in the Indonesian judiciary, it will be contradictory with fast, cheap, low cost and simple trial. This means that it will add a new stage in the execution process, the stipulation will also have an impact on the legal aspects of decisions that have legal force will be ruled out, so that the judicial process does not provide benefits.

Research Method

This is a normative juridical method. The data collected is based on secondary data in the form of laws, books, the latest scientific journals, and searches for other law-related materials. In the normative approach, the author uses a comparative approach, a conceptual approach, and a legal approach. This method only looks at laws and regulations as the norm, but the wetting will be prescriptive

Results and Discussions

Determination of the Banda Aceh District Court Number 98/Pdt.P/Pn.Bna as a form of lawsuit

In the application for determination involved in the application is only one-sided, which side is called the applicant (ex-parte). As for the nature of ex-parte is as intended is only hear information from the applicant or power of attorney in connection with the application and examine evidence and witnesses presented by the applicant and there is no replication-duplicating stage and conclusions. Check application for determination court filed by the applicant must be based on the evidence and proof charged to the applicant to be judge's consideration in examining and provide a determination which evidence as intended must comply with Article 1866 b Civil Code and Articles of Law 164 HIR/284 RBG.

After the judge examined the application along with the evidence that has been submitted by the applicant and the reasons of the applicant in submitting the application has fulfilled provisions, then by including considerations law in the dictum, then the solution the application can be stated indetermination. That the determination issued or determined by the court is a product issued by the judge in resolving problem posed to him soby itself the determination is authentic deed as referred to in Article 1868 letter b of the Code of Law Civil.

The determination of the Banda Aceh District Court's Determination Number Number 98/Pdt.P/Pn.Bna dated July 14, 2017 is a form of family law effort from Mawardy's heirs to avoid execution of a decision that has permanent legal force. Indeed, it has not been explicitly regulated if the family of Mawardy's heirs apply for a determination to provide legal protection and delay execution. The family of Mawardy's heirs is not usually issued by the court as a form of application because there are elements of dispute and interests of other parties in it (not ex-parte). Looking at the history of this case, it is more of a form of further legal action from the defendant's execution. The problem is that the family of Mawardy's heirs are not known in the procedural law and deviate from the procedural law itself ^[5].

According to the Corruption Court's Corruption Court Decision at the Banda Aceh District Court Number: 57/Pid.Sus-TPK/2015/PN-BNA dated April 25, 2015 which stated that the object of the building was 1 (one) second floor house unit located on Jalan Prada Utama Prada Village, Syiah Kuala sub-district, Banda Aceh City Belonging to Engineer MAWARDY NURDIN M.Eng on certified land Property rights number 2037 was seized for the state, MAWARDY NURDIN's family could not immediately apply for a court order on the land.

Based on the description above, it can be clearly and clearly understood that the case does not only concern the interests of one party (ex parte) but also the interests of other parties which are actually the interests of the nation, state and society. The issuance of the Banda Aceh District Court Decision Number 98/Pdt.P/Pn.Bna dated July 14, 2017 to provide legal protection to the execution defendant and delay the execution process after the Corruption Court's Decision on the Corruption Crime at the Banda Aceh District Court Number: 57/Pid. Sus-TPK/2015/PN-BNA dated 25 April 2015 is a deviation in formal and material law Jurisprudence of the Supreme Court Number 5/Pen/Sep/1975 which declared null and void The determination of the Central Jakarta District Court Number 272/1972.P and Number 273/1972.P in the FPC case stated that the Supreme Court as the highest supervisor of the judicial process annulled the decision of the district court This is because the two decisions are procedural in nature based on a lawsuit in which the parties affected or quoted in the decision should be given the opportunity to defend themselves and be heard by the judge ^[6].

The determination of the Banda Aceh District Court Number 98/Pdt.P/Pn.Bna dated July 14, 2017 not only deviates from formal and material law, but is also counter-productive to the court's efforts to create legal certainty. The main task of the judge is to find the law through the completion of the examination of the case either by decision or determination. The discovery of the law either through the decision or the determination by looking at the laws and regulations or making other legal discoveries in the context of realizing legal certainty. It can be said that in essence legal certainty is a condition in which human behavior, both individual groups and organizations are within the corridor that has been outlined by law ^[7].

In the event that legal principles and concrete legal regulations are violated in the issuance of the Banda Aceh District Court Decision Number 98/Pdt.P/Pn.Bna dated July 14, 2017 the Supreme Court should be able to make corrections to the district court's determination such as some of the jurisprudence described above, but law enforcement that is full of irregularities will have an impact on the neglect of legal certainty considering that if

efforts are made to the Banda Aceh District Court Decision Number 98/Pdt.P/Pn.Bna dated July 14, 2017 it will require energy, time, and money for cases that have been decided inkracht can be countered by a court order ^[8].

Chaos Theory of Law on Banda Aceh District Court Decision Number 98/Pdt.P/Pn.Bna dated July 14, 2017

This legal irregularity is known in the chaos theory of law. This understanding of legal irregularities refers to the schema of the relationship between laws and regulations and law enforcement. Legal schemes and relationships that are explicitly formulated in the rule of law do not eliminate the fluid nature behind them, meaning that there is an interaction between humans that determines the meaning behind the legal text which is reinterpreted by the context. In the end what emerges is a complex, fluid, and disorderly state. In such a situation, legal texts cannot run on their own mathematically, instead they must dare to face a context full of impossibility, not to weaken the legal position but to go beyond the dominant way of thinking in interpreting statutory regulations ^[9].

This legal irregularity can be read as something positive or something negative. It can be interpreted as something positive if this legal irregularity arises among bad legal practices so that this legal irregularity can create a stimulant that improves the relationship between law enforcement and legislation through reflection on the legal irregularity. Legal irregularities can be read as negative if these irregularities damage the legal system, principles, and patterns of legal relations and law enforcement that are already running well and law enforcers can implement the law as it functions in social life ^[10].

Samford, chaos theory of law develop chaos theory in law based on complicated power and creates a situation where society cannot be seen as something that is systemic and mechanistic. According to Samford irregularity and uncertainty is a reproduction of the relationship based on the relationship between forces, the relationship is reflected in practice dominance that perpetuates the gap between formal relationships and real relationships that exist in society so that disorder law happens.

This legal irregularity can be read as something positive or something negative. Can be interpreted as something that positive if this legal irregularity appears in between bad legal practices so that this legal irregularity can make a stimulant that improves the relationship between enforcement of laws and regulations through reflection on the irregularities of the law. Legal irregularities can be read as something negative when irregular This destroys the legal system, principles, and patterns of relations legislation and law enforcement that have running well and law enforcement can implement the law as function in social life If the Determination of the Banda Aceh District Court Number 98/Pdt.P/Pn.Bna dated July 14, 2017 is seen as a new practice of applying the law, what is called legal turbulence will occur. If in society there are signs of instability and randomness of social processes in various dimensions, it can be concluded that chaos occurs, the actual chaotic situation that occurs is called turbulence, which is a state between or a boundary between a chaotic state and an orderly state ^[11].

In this case, the Supreme Court must play a role in changing negative chaos into positive chaos. Considering in general there has been confusion in law enforcement practices and in particular that the stipulation of the Banda Aceh District Court Number 98/Pdt.P/Pn.Bna dated July 14, 2017 can disrupt the preservation of natural resources needed for the survival of the people's livelihood ^[12].

Conclusion

To sum up, in the criminal justice system, there are several parties involved, the judge is the party who has the freedom to try, without any intervention from any party. So far, the public prosecutor has sided with the victim and the state, while the legal advisor has represented the defendant. To impose a fair sentence, the judge can determine his freedom in giving a decision. The current reality is that judges do not have freedom, due to their attachment to the law and the will of the defendants represented by legal advisers and also the victims represented by the prosecutors, so that sometimes judges cannot judge things with their conscience. Even judges feel restless and uneasy when they have to punish someone even though there is no strong reason and not enough evidence, but the judge must still pass the law due to his attachment to the law. Based on the current reality, it is necessary to restructure the criminal justice system related to independence based on Pancasila values. Thus, the justice that is obtained is not only procedural but can also be based on substantial justice. Law enforcement based on Pancasila insight means to judge someone by looking at the spiritual and human aspects. Sometimes the judge can also forgive the defendant based on the crime committed too lightly or the perpetrator has compensated for the loss on the part of the victim. Thus, the independence of judges based on Pancasila values provides more benefits and color in law enforcement, so that the law is not merely mere formal legality.

Banda Aceh District Court Decision Number 98/Pdt.P/Pn.Bna dated July 14, 2017 cannot be justified because deviate from procedural law procedures valid, considering the publication is not appropriate with legal rules and procedural law norms applicable. Court ruling model similar to Banda Aceh District Court Decision Number 98/Pdt.P/Pn.Bna dated July 14, 2017 must be studied and returned to the rules of procedural law enforced by the Supreme Court, so that does not become a new pattern in the procedural law system Indonesia. Further in this matter the Supreme Court must take corrective steps in this case by canceling Banda Aceh District Court Decision Number 98/Pdt.P/Pn.Bna dated July 14, 2017 and coming soon carry out the execution of the Court's decision Great. Against Banda Aceh District Court Decision Number 98/Pdt.P/Pn.Bna dated July 14, 2017 must be done immediately corrective steps to avoid setting it will be jurisprudence that destroy the applicable procedural law and instead creates legal uncertainty.

References

1. Sudikno Mertokusumo. Hukum Acara Perdata Indonesia, Liberty, Yogyakarta.
2. Yahya Harahap M. Pembahasan Permasalahan dan Penerapan KUHAP Pemeriksaan SidangPengadilan, Banding, Kasasi, Peninjaun Kembali, Edisi Kedua, Sinar Grafika Offset, Jakarta, 2000
3. Ariadi BS, Usanti TP, Wahyudi J. Peran lembaga peradilan dalam, 2016.
4. Fuady M. Aliran hukum kritis. Cetakan VI. Bandung: PT Citra Aditya Bakti, 2012.
5. Harahap MY. Hukum acara perdata tentang gugatan, persidangan, penyitaan, pembuktian & putusan pengadilan. Cetakan V. Jakarta: Sinar Grafika, 2014.
6. Haris AM. Penerapan hukum acara perdata. Cetakan VIII. Jakarta: Kencana, 2016.
7. Hatta M, Yustanti DE. Hukum acara perdata dalam tanya jawab. Cetakan III. Yogyakarta: Liberty, 2013.
8. Kanter. Etika profesi hukum: Sebuah pendekatan sosio-religius. Cetakan X. Jakarta: Storia Grafika, 2013.
9. Marzuki P. Penelitian hukum. Cetakan XII. Jakarta: Prenada Media, 2017.
10. Mertokusumo S. Penemuan hukum. Cetakan IX. Yogyakarta: Liberty, 2014.
11. Setiawan. Aneka masalah hukum & hukum acara perdata. Cetakan XV. Bandung: Alumni, 2012.
12. Sudjito. Chaos theory of law: Penjelasan atas keteraturan & ketidakteraturan dalam hukum. *Mimbar Hukum*,2006:18(2):159-175.