

PERAN JAKSA PENUNTUT UMUM SELAKU EKSEKUTOR DALAM PUTUSAN PERKARA PIDANA YANG BERKEKUATAN HUKUM TETAP

Cut Nurita^{1*}, Nusantara Tarigan Silangit², Muhammad Ridwan Lubis³, Misnan Al Jawi⁴,
Syarifuddin⁵, Mhd Taufiqurrahman⁶

^{1*,2,5,6} Universitas Islam Sumatera Utara, Medan, Indonesia

³ Universitas Muslim Nusantara Al Washliyah, Medan, Indonesia

⁴ Universitas Al Washliyah, Medan, Indonesia

***Corresponding Author:** cutnurita12@gmail.com^{1*}, nusantaratarigan24@gmail.com²,
muhammadridwanlubis76@gmail.com³, syarifuddin@fh.uisu.ac.id⁵,
mhdtaufiqurrahman79@gmail.com⁶

Abstrak

Pelaksanaan putusan hakim yang telah berkekuatan hukum tetap merupakan bagian yang terpenting dari proses peradilan karena di sinilah penegakan keadilan yang sebenarnya. Peran penuntut umum sebagai pelaksana putusan pengadilan dalam perkara pidana yang telah berkekuatan hukum tetap adalah dapat melaksanakan eksekusi berdasarkan petikan putusan pengadilan. Salinan putusan atau petikan putusan (pemeriksaan) yang sudah dikirimkan kepada para pihak (terdakwa dan kejaksaan), maka petikan putusan pemeriksaan sudah dapat dijadikan dasar eksekusi, sebab di dalamnya ada amar atau diktum putusan, tetapi pertimbangan hukumnya tidak lagi dimuat. Mekanisme pelaksanaan putusan pengadilan dalam perkara pidana yang telah berkekuatan hukum tetap adalah panitera harus mengirimkan salinan putusan kepada kejaksaan untuk dilaksanakan oleh penuntut umum. Hambatan penyelesaiannya yang dihadapi penuntut umum sebagai pelaksanaan putusan pengadilan dalam perkara yang telah berkekuatan hukum tetap adalah putusan yang telah mempunyai kekuatan hukum tetap namun salinan putusan tersebut belum diserahkan ke kejaksaan.

Kata Kunci : Jaksa Penuntut Umum, Putusan, Berkekuatan Hukum Tetap.

THE ROLE OF THE PUBLIC PROSECUTOR AS EXECUTOR IN CRIMINAL CASE DECISIONS THAT HAVE PERMANENT LEGAL FORCE

Abstract

The implementation of a judge's decision that has permanent legal force is the most important part of the judicial process because this is where the real enforcement of justice is. The role of the public prosecutor as the executor of a court decision in a criminal case that has permanent legal force is to be able to carry out the execution based on an excerpt of the court decision. A copy of the decision or excerpt of the decision (criminal) that has been sent to the parties (defendant and prosecutor's office), then the excerpt of the criminal decision can be used as the basis for execution, because it contains the verdict or dictum of the decision, but the legal considerations are no longer included. The mechanism for implementing a court decision in a criminal case that has permanent legal force is that the clerk must send a copy of the decision to the prosecutor's office to be implemented by the public prosecutor. The obstacles to its resolution faced by the public prosecutor as the executor of a court decision in a case that has permanent legal force are decisions that have permanent legal force but a copy of the decision has not been submitted to the prosecutor's office.

Keywords: Public Prosecutor, Decision, Permanent Legal Force.

1. INTRODUCTION

Regarding the component of the Court, it is regulated in Article 24 of the 1945 Constitution which reads "judicial power is an independent power to administer justice to uphold law and justice" and as stated in Law Number 48 of 2009 which affirms "judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution, for the implementation of the rule of law of the Republic of Indonesia". The exercise of the above-mentioned judicial power is left to judicial bodies, especially Judges with their main duties, namely: receiving, examining and adjudicating, as well as resolving every case submitted to



them. The products produced in the judicial process, especially criminal justice, are judges' decisions. Article 1 point 11 of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) states that "A court decision is a judge's statement pronounced in an open court session, which can be in the form of a conviction or free or free from all lawsuits in the case and in the manner regulated in this law".

The implementation of court decisions that have permanent legal force (execution) in the criminal justice system in Indonesia is part of criminal law enforcement. Legally or *in-concreto* law implementation by the criminal law enforcement apparatus. In general, it is known that the apparatus or legal institution that implements judges' decisions that have permanent legal force is the Prosecutor's Office of the Republic of Indonesia. As stipulated in Article 270 of the Criminal Code which states "The implementation of court decisions that have obtained legal force is still carried out by the prosecutor, for which the clerk sends a copy of the decision letter to him." This is also regulated in Article 30 paragraph (3) letter (b) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (hereinafter referred to as the Prosecutor's Law) which reads: "In the criminal field, the prosecutor's office has duties and authority: Carry out the appointment of judges and court decisions that have permanent legal force" Furthermore, it is regulated and emphasized again in article 54 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as the Judicial Law) which states that: "The implementation of court decisions in criminal cases is carried out by the prosecutor".

The Prosecutor's Office in its implementation must pay attention to human values and justice as mentioned in the Judiciary Law. Justice is something that is difficult to define, but it can be felt and is an element that cannot be separated from the law as a set of principles and rules that guarantee order and order in society. Justice must be considered in the implementation of execution, because execution is the ultimate goal of the criminal procedure law. Based on Article 48 paragraph (8) PER-036/A/JA/09/2011 concerning the Enforcement of General Criminal Cases, the complete implementation of court decisions (corporal crime, fines, evidence, restitution, and case costs no later than 7 (seven) days after the receipt of the letter of implementation of the court decision order based on Article 48 paragraph (2) PER/036/A/JA/09/2011 concerning the Detention of General Criminal Cases shall be issued no later than 3 (three) days after the receipt of the court decision.

The implementation of a court decision is the implementation of a court decision that can no longer be changed, voluntarily obeyed by the disputing party. The meaning of the word execution means that the losing party inevitably has to obey the decision voluntarily, so the decision must be forced on him with the help of public force. The decision of the District Court can only be enforced, if it has received definite force, that is, if it is not possible or impossible to hold an immediate comparison pronounced in public, unless the defendant requests a postponement of implementing the judgment for fourteen days within which period the convicted person intends to advance the clemency application to the President. Usually, a decision can be made against the accused only after the decision has become the final decision, in other words, if the usual legal remedies have been taken. In the event that an appeal is requested from a district court decision by the high court, the district court decision cannot be carried out either, but must await the decision in the appeal by the high court. The implementation of the decision by the public prosecutor as the executor of the court decision that has obtained legal force is still carried out by the prosecutor, for which the Penitera sends a copy of



the decision letter to the prosecutor (Article 270 of the Criminal Procedure Code). The execution of court decisions can only be carried out by the prosecutor, after the prosecutor receives a copy of the decision letter from the clerk. According to SEMA No. 21 of 1983 dated December 8, 1983, the deadline for sending a copy of the decision from the clerk to the prosecutor for ordinary case is a maximum of 1 (one) week and for cases with short events is a maximum of 14 days.

The implementation of court decisions by the prosecutor or public prosecutor is no longer in prosecutions such as detention, indictments, charges and others which in this Criminal Procedure Code clearly states: prosecutors, in contrast to prosecutions such as detention, indictments, charges and others are called public prosecutors. By itself, this means that the prosecutor who is not the public prosecutor for a case can carry out the court's order. The implementation of judges' decisions that pay attention to humanity and justice. First of all, the registrar makes and signs a certificate that the decision has acquired permanent legal force. Then the prosecutor made a warrant to carry out the court decision which was sent to the correctional institution. If the clerk is unable to send a citation of the decision, because the letter of decision has not been completed, then the citation may be replaced with a statement signed by the Judge and the clerk and which contains the matters that must be mentioned in the citation letter. The prosecutor, after receiving the citation or certificate mentioned above, must make an effort, so that the judge's decision as soon as possible can be implemented.

The implementation of the court decision is related to the stages of criminal law enforcement as follows:

- 1) The formulation stage is the stage of criminal law enforcement *in abstracto* by the law-making body. In this stage, lawmakers carry out activities to select values that are in accordance with current and future circumstances and situations, then formulate them in the form of criminal laws and regulations to achieve the best legislative results in the sense of meeting the requirements of justice and usefulness. This stage is called the legislative policy stage.
- 2) The application stage is the criminal law enforcement stage (the criminal law application stage). By law enforcement officials ranging from the police to the courts. Law enforcement officials in this stage are tasked with enforcing and implementing criminal laws and regulations that have been made by lawmakers. In carrying out this task, law enforcement officials must adhere to the values of justice and the usefulness of this stage can be called the judicial stage.
- 3) The execution stage is the stage of concrete law enforcement (implementation) by criminal enforcement officials. In this stage, criminal enforcement officials are tasked with enforcing criminal laws and regulations that have been made by lawmakers through the application of penalties that have been stipulated in court decisions. In carrying out the punishment that has been stipulated in the court decision, the criminal enforcement officers in carrying out their duties must be guided by the criminal laws and regulations made by the lawmakers and the values of justice of a useful force.

2. IMPLEMENTATION METHOD

The object of this research is the role of the public prosecutor as the implementation of court decisions in cases with permanent legal force. The nature of this research is descriptive. Descriptive research is intended to provide the most thorough data possible. In this case, the author will describe the role of the public prosecutor as the

implementation of court decisions in cases with permanent legal force.

3. RESULTS AND DISCUSSION

The implementation of the law can take place in society normally because each individual obeys with the awareness that what is determined by the law is either as a necessity or as something that is indeed good. The implementation of the law is also an effort to realize the ideas of justice, because in the process the community wants the implementation to be quickly realized as the laws and regulations that have regulated it so that the sense of justice and the need for the law can really be fulfilled. A court decision is a judge's statement pronounced in an open court hearing, which can be in the form of a conviction or a release from all lawsuits in the case and in the manner regulated in this law. The judge's decision is the end of the criminal trial process for the examination stage in the district court. A judge can only punish a defendant if the offense is legally proven according to the applicable rules.

In fact, the judge's decision must indeed be held accountable to the parties, namely the litigant, the public, the appeals court, the prosecutor's office, science, the state and the nation, which is no less important to be accountable to God Almighty. Execution is the final stage of case resolution process in the *Integrated Criminal Justice System* adopted by the Criminal Code. The Criminal Procedure Law has 3 (three) functions, finding and finding the truth of the decision given by the Judge and the implementation of the judge's decision. The function of seeking and finding the truth is carried out through a trial in the Court in the manner regulated in the applicable criminal procedure law. Based on the results of the trial, the judge then gave a verdict which was subsequently implemented by the prosecutor. The criminal case settlement process is considered and considered successful in law enforcement if the execution of the judge's decision that has permanent force is carried out correctly by the prosecutor in accordance with the provisions of the applicable law.

The execution of a court decision is the implementation of a court decision that can no longer be changed, voluntarily obeyed by the disputing party. The meaning of the word execution means that the losing party inevitably has to obey the decision voluntarily, so the decision must be forced on him with the help of public force. The decision of the district court can only be carried out, if it has received definite force, that is, if it is not possible or impossible to hold an immediate comparison pronounced in public, unless the defendant requests a postponement of the execution of the decision for fourteen days within which period the convicted person intends to advance the clemency application to the President. Usually, a decision can be made against the accused only after the decision has become the final decision, in other words, if the usual legal remedies have been taken.

A sentence imposed without the presence of the accused or *in absentia* (the defendant's absence from the trial) is an exception. If the summons has been served on the accused personally or where the accused is present at the trial according to the prescribed period within which the appeal must be entered, it begins with the declaration of the guilt of the defendant, the guilt of the defendant and the sentence is imposed and there is no need for any special notice of the court's decision. The implementation of court decisions by the prosecutor or public prosecutor is no longer in prosecutions such as detention, indictments, charges and others which in this Criminal Procedure clearly state the prosecutor, in contrast to prosecutions such as detention, indictments, charges and others called public prosecutors. By itself, this means that the prosecutor who is not

the public prosecutor for a case can carry out the court decision.

The prosecutor as the executor of the judge's decision who has legal force is still required to have professional technical ability in carrying out his duties and authority as an executor in accordance with applicable regulations. Theoretically and in practice, a court decision can be executed if the decision has permanent legal force. Theoretically and in practice, a court decision can be executed if the decision has permanent legal force. The definition of a decision that has permanent legal force is if the defendant or the public prosecutor has received the verdict or if the legal remedy is not used by the entitled party so that the grace period to file a legal remedy has been passed or a legal remedy has been filed by the entitled party but then the legal remedy that has been filed is then revoked or the Supreme Court's decision is examined for cassation.

The existence of legal remedies submitted by the public prosecutor does indeed make the court decision not yet have permanent legal force, which means that the court decision cannot be implemented. If in the court's decision the panel of judges orders that the defendant be released from custody, then the prosecutor immediately executes the order to release or release the defendant from custody. (Article 191 Paragraph (3), Article 192 Paragraph (1) and Paragraph (2), Article 197 Paragraph (1) k of the Criminal Code). Even though the prosecutor removed the defendant from custody, it cannot be interpreted that the prosecutor carried out a Court decision that has not yet had permanent legal force, but it must be interpreted that the prosecutor carried out the judge's determination order in the court decision concerned.

Convicts who were not previously detained, before or after the decision of a judge with permanent power (*incracht*) can still carry out activities as usual. This happened because the execution carried out by the prosecutor's office was not carried out immediately. Before the implementation of the court decision by the Prosecutor, a case must undergo a process in handling criminal cases. Starting from investigation, investigation, detention, prosecution to examination in court which ends with a decision with permanent legal force. After a decision with permanent legal force, the prosecutor can implement the decision. The implementation of court decisions against convicts who were previously detained is different from the implementation of court decisions against convicts who were not previously detained.

After going through the examination process in court until the imposition of the verdict handed down by the judge against the convict, then the implementation of the verdict goes through the process as shown in the chart above. There is a difference in the implementation of court decisions against convicts who were previously detained and convicts who were not previously detained. If the convicted person was previously detained, then the implementation of the court decision against the convicted person is carried out by carrying out further detention in accordance with the number of years of imprisonment imposed minus how long the convict was previously detained. The implementation of court decisions will be different and get more specific treatment if the previous convict was not detained, the prosecutor's office will summon the convict to appear at the prosecutor's office first.

As one of the parts of a criminal justice system, the Prosecutor's Office has the authority to implement court decisions against convicts whose cases have been decided and there are no further legal remedies so that the decision has permanent legal force which in its verdict contains a penalty. The duties as executors of court decisions imposed on the prosecutor are regulated in Article 1 point 1 of the Prosecutor's Law that "The prosecutor is a functional official authorized by law to act as a public prosecutor and the

implementation of court decisions that have obtained permanent legal force and other authority based on the law. Before the execution of the court decision, the decision must have permanent legal force, permanent legal force in practice, namely when the public prosecutor and the convict have received a copy of the decision and the prosecutor or convict do not appeal or other legal remedies.

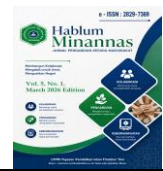
The execution of the execution for cases that carry out legal remedies is carried out pending the decision of the results of the legal remedy and after that the execution can only be carried out with the provision that the prosecutor can only carry out the decision after a copy of the decision from the court to be immediately made by the head of the local prosecutor's office.

4. CONCLUSION

The role of the public prosecutor as the executor of court decisions in criminal cases that have permanent legal force is to be able to carry out executions based on excerpts of court decisions. The mechanism for implementing court decisions in criminal cases that have permanent legal force is that the clerk must send a copy of the decision to the prosecutor's office to be implemented by the public prosecutor. The Registrar is required to send a copy of the decision to the public prosecutor no later than 1 (one) week for the Ordinary Examination Event case and no later than 14 (fourteen) days for the Brief Examination Event case. In the event that the Supreme Court's decision has permanent legal force, the public prosecutor can execute simply with a citation of the decision, without waiting for a copy of the decision.

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