

## **Barriers to The Execution of Seizure of Execution against Court Decisions That Have Permanent Legal Force (Example is The Case of Confiscation of Execution of Assets of Perumda Salatiga)**



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**ABSTRACT:** This research aim to determine the regional finance management arrangements for the assets of regional public company originating from separated regional assets and the constraints in the execution of assets of Perumda BPR Bank Salatiga. This research uses normative research. The research was conducted by library research using secondary data, while the tool used was document study. The data that has been collected is analyzed qualitatively. The results of this study indicate that the Regional Financial Management of Regional Public Company (Perumda) assets is the authority and responsibility of the Regional Government represented by the Regional Head who is the owner of capital as well as the owner of Perumda and Barriers in the execution of the seizure of the assets of Perumda BPR Bank Salatiga because there is Article 50 of Law No. 1 of 2014 concerning the State Treasury which prohibits the execution of assets belonging to the region.

**KEYWORDS:** Execution, Regional Public Company, Regional Finance, Regional Asset

### **I. INTRODUCTION**

The economic activities of a country are not only driven by the population residing in the country, but are also carried out by the country/government of that country. The government in the context of economic implementation acts as a legislator to make policies so that the implementation of a country's economy can run well and prosper the people.<sup>1</sup> In Indonesia, the role of the state in economic activities is stated in the fourth paragraph of the Preamble to the 1945 Constitution, namely: protecting the entire Indonesian nation and the entire homeland of Indonesia, promoting public welfare, educating the nation's life, and participating in carrying out world order based on freedom, eternal peace and justice social...". The economy is structured as a joint effort of the entire community based on the principle of kinship for the welfare of all. The prosperity of the community is prioritized, not the prosperity of individuals alone. Regional autonomy is a new chapter in the Indonesian state administration system. The enactment of regional autonomy means a new era in financing and regional development by the respective regional governments. Regions are required to be more independent. The implementation of government affairs which are the authority of the regions are funded from and at the expense of the Regional Revenue and Expenditure Budget (APBD), as regulated in Article 282 of Law no. 23 of 2014 concerning Regional Government.

One of the sources of regional income is Regional Original Income (PAD), which includes the results of separated regional wealth management. The results of the management of separated regional assets include the profit share from Regional Owned Enterprises (BUMD) and the results of cooperation with third parties, as explained in Article 285 paragraph (1) letter a number 3 of Law no. 23 of 2014 concerning Regional Government. PAD must be part of the largest financial source for the implementation of regional autonomy. This shows that PAD is the most important benchmark for regional capacity in implementing and realizing regional autonomy. Regional autonomy is a form of decentralization of power and equitable distribution of economic development in Indonesia, so that the implementation of the economy can be carried out evenly and massively.<sup>2</sup>

In order to optimize the management of regional wealth, a regional-owned enterprise (BUMD) was established. The authority of the Regional Government to establish and manage Regional Owned Enterprises (BUMD) is stated in Government Regulation No. 25 of 2000 concerning the Authority of the Government and Provinces as Autonomous Regions. The characteristics of Regional Owned Enterprises include; The government holds the right to all wealth and business. The government is domiciled

<sup>1</sup> Taufiqurrohman Syahuri, 'Politik Hukum Perekonomian Berdasarkan Pasal 33 UUD 1945', *Jurnal Konstitusi*, 9.2 (2012), 243-257. P. 251.

<sup>2</sup> Telly Sumbu, 'Hubungan Pemerintah Pusat Dengan Pemerintah Daerah Dalam Kerangka Pengelolaan Keuangan Negara Dan Daerah', *Jurnal Hukum IUS QUIA IUSTUM*, 17.4 (2010), 567-588. P. 571.

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as a shareholder in the company's capital. The government has the authority and power in setting company policies. Supervision is carried out as a complementary tool of the authorized state. Serve the public interest, in addition to seeking profit. As an economic stabilizer in the context of the welfare of the people, as a source of state income and the Board of Directors is fully responsible for BUMD. SOEs are implemented based on law-based economic activities.<sup>3</sup>

BUMD is expected to be one of the pillars of the regional economy. The establishment of BUMD is expected to provide benefits to the regional economy, organize public benefits in the form of providing goods and/or services that are quality for fulfilling the needs of the community according to the conditions, characteristics and potential of the area concerned based on good corporate governance, and obtaining profits and/or profits as regulated in Article 7 PP No. 54 of 2017 concerning Regional Owned Enterprises (BUMD). Regional Owned Enterprises (BUMD) are companies established by the Regional Government. In BUMD, there are two types of companies, namely Regional Public Companies and Regional Public Companies.

The establishment of Regional Public Companies is prioritized in the context of providing public benefits in the form of providing quality goods and/or services for the fulfillment of people's livelihoods in accordance with the conditions, characteristics and potential of the region concerned. Regional Public Companies as economic actors are expected to become economic drivers in the regions, among others through activities business in order to meet the needs of the community in the form of goods and services. Perumda ideally is one source of local government revenue. Perumda is an embodiment of the role of local governments in regional economic development, one of which is through the banking sector.

Banking is one of the fields that play an important role in human life now and in the future, besides that it is also a driving force for the national economy of a country. The importance of the role of banks in driving the national economy is required to be able to realize the goals of national banking, namely "Indonesian banking aims to support the implementation of national development in order to increase equity, economic growth and national stability towards improving the welfare of the people at large". In the general explanation it is stated that national development is a sustainable development effort in the context of realizing a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Banks as business entities that carry out intermediation functions by collecting funds from the public in the form of deposits and channeling them to the public in the form of credit, of course, are business oriented to seek profit (profit) and carry out other activities to support this function through services with serving financial transactions and payment traffic, so it is called an agent of services.<sup>4</sup> Banks earn profits based on the principle of trust given by the community, these profits are obtained from the difference in interest between incoming funds from the public and funds issued, the principle of trust is emphasized or intended so that the community voluntarily conducts transactions at the bank,<sup>5</sup> and in order to maintain public trust in banks, the government must try to protect the public from the actions of irresponsible institutions or BPR employees and damage the joints of public trust.<sup>6</sup>

The role of the Bank is very large in encouraging the economic growth of a region. All business sectors, including industry, trade, agriculture, plantations, housing services, and others, really need the Bank as a partner in developing their business.<sup>7</sup> For a country, the role of the bank can also be said as the blood of the economy of a country. Therefore, the role of banks greatly affects the economic activities of a country, in other words the progress of a bank in a country can be used as a benchmark for the progress of the country. The existence of the banking world is increasingly needed by the government and society, currently there are various forms of banking, one of which is Perumda BPR Bank Salatiga.

The progress of a country is marked by the role of banks that drive the wheels of the economy and control a country, but in reality, banks in carrying out their roles and functions do not always benefit the state, government or society, as happened in the case of Perumda BPR Bank Salatiga which actually harmed the community. The case of Perumda BPR Bank Salatiga began when customers placed a number of funds in the form of Time Deposit funds at Bank BPR Salatiga in stages with a total amount of Rp.2,372,000,000, - (two billion three hundred seventy-two million rupiah) consisting of 14 (fourteen) time deposit slips. Whereas when a customer wants to withdraw all of his deposit funds, Perumda BPR Bank Salatiga cannot pay the amount of money recorded in the time deposit bill for various reasons. Departing from this problem, the Customer who feels that he has been harmed takes legal action, namely submitting a lawsuit to the Salatiga District Court which has been decided and has obtained permanent legal force. Despite having made various legal efforts, until now the Customer has not received what is his right, even though he has

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<sup>3</sup> Fajar Sugiarto, *Economic Analisis of Law (Seri Analisis Ke-Ekonomian Tentang Hukum)*, 1st edn (Jakarta: Kencana Prenada Media Group, 2013).p.34.

<sup>4</sup> Posma Sariguna Johnson Bündner Bauernverband. and Alvani Amaerita Harefa, 'Financial Technology, Regulation and Banking Adaptation in Indonesia', *Fundamental Management Journal*, 3.1 (2018), 1-11 <<http://ejournal.uki.ac.id/index.php/jm/article/view/715>>.

<sup>5</sup> Muhammad Djumhanna, *Hukum Perbankan di Indoensia*, (Bandung: Citra Aditya, 2006), P. 101.

<sup>6</sup> Ibid. P.337

<sup>7</sup> Zulfiqar Hasan, 'Conversion of Conventional Banks into Islamic Banks: The Case of Bangladesh', *International Journal of Ethics in Social Sciences*, 4.1 (2016), 63-78. P. 67.

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submitted a request for execution, the Perumda BPR Bank Salatiga does not have good intentions to make payments to the Customer. Perumda BPR Bank Salatiga actually cannot fulfill its rights and obligations as an institution that carries out banking activities, namely not returning customer funds and instead choosing to ignore even Perumda BPR Bank Salatiga looks arrogant because it feels its position is strong because Perumda BPR Bank Salatiga as a Regional Public Company whose capital is to all of which are separated regional assets owned by the regions, therefore the assets cannot be confiscated because the assets belong to the regions. This is because the state invests capital (derived from the APBD) in Perumda. Therefore, Perumda BPR Bank Salatiga uses the provisions of Article 50 of Law no. 1 of 2004 concerning the State Treasury as a basis for protecting regional assets from confiscation of executions.

From the case description above, it appears that all assets owned by Perumda BPR Bank Salatiga which were requested to be confiscated are actually owned by the Regional Government, so that this becomes an obstacle for customers to immediately get what they are entitled to in the form of payment for losses suffered as a result of unlawful acts. conducted by Perumda BPR Bank Salatiga. Based on the explanation above, the question that arises is how to regulate the wealth of Regional Public Companies as a form of separated state assets? How are regional financial management arrangements for Perumda assets originating from separated regional assets and what are the obstacles in the implementation of the confiscation of assets for Perumda BPR Bank Salatiga?

### **II. RESEARCH METHOD**

This research uses normative juridical research. Normative legal research methods or library legal research methods are methods or methods used in legal research carried out by examining existing library laws.<sup>8</sup> The legal research sought is a method, norm or *das sollen* not events, behavior in the sense of facts or *das sein*. Methods are secondary data contained in legislation, jurisprudence (primary legal materials), literature or literature (secondary legal materials). However, normative legal research can be complemented by field research.<sup>9</sup> Spesifikasi penelitian ini adalah deskriptif analitis, yaitu penelitian yang bertujuan untuk melukiskan tentang suatu hal tertentu.<sup>10</sup> This analytical descriptive research aims so that the results of the study can provide an overview and can describe the existing conditions and facts about the obstacles to the implementation of the confiscation of execution of the assets of the Regional Public Company (Perumda) in court decisions that have permanent legal force, as well as the problems and analyze them so that a decision can be made general conclusions. Methods of data analysis using qualitative research methods. Qualitative research method is research that in analyzing the data using qualitative analysis methods, the data used in this study is not data in the form of numbers but verbal words as a result of research in the field. Data analysis is the process of sensing (description) and compiling interview transcripts and other materials that have been collected.

### **III. DISCUSSION**

#### **Regional Financial Management Arrangements for Perumda Assets Derived from Separated Regional Assets**

##### **a. State Finance Management**

Article 1 point 1 of Law no. 17 of 2003 concerning State Finance states "State finances are all rights and obligations of the state that can be valued in money, as well as everything in the form of money or in the form of goods that can be used as state property in connection with the implementation of these rights and obligations. State finances can be defined in many ways according to different subjects. According to Geodhart, state finances are a series of laws that are stipulated periodically which give the government the power to carry out expenditures for a certain period and indicate the financing tools needed to cover these expenditures.<sup>11</sup> Furthermore, according to Van der Kemp are all rights that can be valued in money, as well as everything (whether in the form of money or goods) that can be used as state property related to these rights.<sup>12</sup> Meanwhile, according to Arifin P. Soeria Atmadja describes the dualism of the notion of state finances, namely state finances in a broad sense and state finances in a narrow sense. The definition of state finance in the broadest sense is finance originating from the APBN, APBD, Finance of State Business Units or state-owned companies and essentially all state assets. While the definition of state finances in a narrow sense is finance that comes from the state budget only.<sup>13</sup>

In Article 2 of Law no. 17 of 2003 concerning State Finance, regulates the scope of state finance which includes: (a) The right of the state to collect taxes, issue and circulate money and make loans. (b) The state's obligation to carry out public service

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<sup>8</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, (Jakarta: Raja Grafindo Persada, 2013), p. 13.

<sup>9</sup> Sudikno Mertokusumo, *Penemuan Hukum Suatu Pengantar*, (Yogyakarta: Penerbit Universitas Atma Jaya, (tanpa tahun)), p. 36-37.

<sup>10</sup> Waluyo Bambang, *Penelitian Hukum Dalam Praktek, Edisi 1, Cet ke 3*, (Jakarta: Sinar Grafika, 2002), p. 2.

<sup>11</sup> W. Riawan Tjandra, *Hukum Keuangan Negara*, (Jakarta: Grasindo, 2006), p. 1.

<sup>12</sup> Nia K. Winayanti, *Hand-out Pengertian Keuangan Negara*, FH Unpas, 2015.

<sup>13</sup> Arifin P. Soeria Atmadja, *Mekanisme Pertanggungjawaban Keuangan Negara*, (Jakarta: PT. Gramedia, 1986), p.49.

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tasks for the state government and pay third party bills. (c) State Revenue. (d) State Expenditures. (e) Regional revenue. (f) Regional expenditures. (g) state/regional assets managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated from state/regional companies. (h) the assets of other parties controlled by the government in the context of carrying out government duties and/or public interests. (i) The wealth of other parties obtained by using facilities provided by the government. From these nine points, it explains the definition of state finances which includes state/regional assets managed by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated on state/regional company.

State Financial Management in Law no. 17 of 2003 concerning State Finances uses the APBN and APBD mechanisms, each of which is prepared based on the authority that manages it. The President as the Head of Government holds the power to manage state finances as part of the government's power and the power over the management of state finances is used to achieve state goals. Where the APBN is prepared to finance the Central Government in carrying out its duties and functions. In assisting the duties of the Head of Government, this power is delegated to the Minister of Finance, the Minister/head of the institution as the Budget User/Property User of the state ministry/institution he leads and to the Governor/Regent/Mayor as the Head of the Regional Government. Meanwhile, the Regional Government based on the principle of decentralization performs its function as a regional financial manager. Where the APBD is prepared to finance the Regional Government in carrying out its duties and functions.

### **b. Regional Wealth**

In the concept of regional autonomy, regional governments are required to manage regional finances effectively, efficiently and accountably. Regional governments must try to manage regional revenues carefully, precisely and carefully. Local governments must ensure that all potential revenues have been collected and recorded into the local government accounting system. The main aspect in regional revenue management that needs serious attention is the management of Regional Original Revenue (PAD). PAD must be part of the largest financial source for the implementation of regional autonomy.<sup>14</sup> This shows that PAD is the most important benchmark for regional capacity in implementing and realizing regional autonomy. PAD can come from local taxes, regional levies, the results of separated regional wealth management, and other legitimate PAD. PAD is used to carry out government activities and regional development programs. so that PAD reflects the independence of a region because it is the main source of regional wealth.

Regional wealth or usually known as regional assets. Understanding assets in general are goods (things) or anything that has economic value (economic value), commercial value (commercial value) or exchange value (exchange value) owned by a business entity, agency or individual.<sup>15</sup> Regional assets are divided into regional assets owned and separated regional assets.

Based on Article 1 of Law. No. 1 of 2004 concerning the State Treasury states that regional assets owned are called Regional Property (BMD), namely all goods purchased or obtained at the expense of the APBD or derived from other legitimate acquisitions. Regional assets essentially consist of movable assets (official vehicles, documents, etc.) and immovable assets (land, buildings, etc.). Regional wealth is one component that plays a role in supporting regional development. In addition, regional assets can be categorized into 2 (two) forms, namely financial assets (cash and cash equivalents, receivables, securities in the form of short-term and long-term investments) and non-financial assets (fixed assets, other assets and inventories).<sup>16</sup> Based on the description above, it can be concluded that assets are all regional assets owned or controlled by the regional government, purchased or obtained at the expense of the APBD or derived from other legitimate acquisitions. Meanwhile, regional wealth whose management is separated from the APBD is called separated regional wealth. The existence of this separated regional wealth is partly due to the regional government's investment in business entities, both regionally owned companies and privately owned companies. Regional investment in the form of separated regional assets is expected to be a source of APBD income.<sup>17</sup>

### **c. Regional Owned Enterprises (BUMD)**

In order to optimize the management of regional wealth, a regional-owned enterprise (BUMD) was established. Article 1 point (1) PP no 54 of 2017 concerning BUMD provides a definition of BUMD as a business entity established by a regional government whose capital is largely or wholly owned by the regional government. BUMD is the driving force of the regional economy because it was founded with a vision to provide benefits for regional economic development, provide public services, and earn profits. The establishment and implementation of BUMD functions as part of separated regional property rights as regulated in Article 1 point

<sup>14</sup> Chabib Soleh dan Heru Rocmansjah, *Pengelolaan Keuangan dan Aset Daerah*, (Jakarta :Fokusmedia, 2010), p. 68

<sup>15</sup> Doli Siregar D, *Manajemen Aset*, (Jakarta : PT. Gramedia Pustaka Utama, 2004), p. 178.

<sup>16</sup> <https://www.coursehero.com/file/ptopmd/B-Jenis-jenis-Aset-Daerah-Aset-daerah-adalah-semua-kekayaandaerah-yang-dimiliki/>, diakses pada 8 November 2021.

<sup>17</sup> <https://bppk.kemenkeu.go.id/content/berita/balai-diklat-keuangan-malang-penjualan-kekayaan-daerahyang-dipisahkan-di-mata-peraturan-perundangan-keuangan-negara-oleh-dr-achmat-subekan-se-msi-2019-11-05-cbfc2a4/>, diakses pada 8 November 2021.

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6 General Provisions of PP no. 54 of 2017 concerning BUMD, it is stated that the separated regional wealth is regional wealth originating from the APBD to be used as regional capital participation in BUMD. Separate Regional Wealth arrangements consist of, among others, the share of profits from BUMD which consists of profits from Regional Development Banks and a share of profits from other BUMDs. Equity participation in BUMD is a separated regional asset, i.e. its management is outside the management of the regional government and aims to obtain a share of the profit on ownership or equity participation from the results of the management of separated regional assets.

Based on Article 4 and Article 5 of PP No. 54 of 2017 concerning BUMD, in BUMD there are two types of companies, namely Regional Public Companies and Regional Public Companies. The main difference between a Regional Public Company and a Regional Public Company lies in the capital ownership of the company in question. Regional Public Company is a BUMD whose capital is owned by a region and is not divided into shares. Meanwhile, a Regional Company is in the form of a Limited Liability Company whose capital is divided into shares which are wholly or at least 51% percent owned by a region. . In addition, BUMD whose legal form is a Regional Public Company is subject to the applicable laws and regulations governing regional companies. BUMD whose legal form is in the form of a limited liability company is now called a Regional Owned Company, subject to the Law on Limited Liability Companies.

### **d. Regional Public Company**

In Article 2 of Law no. 5 of 1962 concerning Regional Companies provides a definition of Regional Companies which are now called Regional Public Companies (Perumda) that Regional Companies are all companies established under this Law whose capital is wholly or partially constitutes separated regional assets, unless otherwise specified. with or under the Act. So the assets of the Regional Public Company come from regional assets which are separated from the APBD.

All Management in Regional Public Companies is in the hands of the Regional Public Company Management (which usually consists of the Supervisory Board and Directors) who are responsible to the Regional Head. In Article 3 paragraph (1) letter a PP No. 54 of 2017 concerning BUMD, it is stated that the Regional Head is the representative of the Regional Government in the ownership of regional assets that are separated from the Regional Public Company domiciled as the owner of capital. So that the Regional Head has the responsibility as the owner and manager of the Regional Public Company.

Article 43 paragraph (1) of Law no. 1 of 2004 concerning the State Treasury states that, Governors/Regents/Mayors establish policies for the management of regional property. In Law no. 1 of 2004 concerning the State Treasury only states that regional property is the management of all goods purchased or obtained at the expense of the APBD or derived from other acquisitions. Thus, the Governor/Regent/Mayor has been given full power over in managing the finances of their respective regions, from planning or budgeting to accountability. The provisions on the power of regional heads in managing regional finances do not only cover the finances in the APBD, but also include the ownership of separated regional assets. The regional head represents the regional government in the ownership of separated regional assets.

Provisions in Law no. 1 of 2004 concerning the State Treasury mentioned above is then followed up in Article 5 paragraph (1) of PP No. 58 of 2005 concerning Regional Financial Management states that the Regional Head as the head of the regional government is the holder of the power of regional financial management and represents the regional government in the ownership of separated regional assets. The same statement is also contained in Article 5 paragraph (1) of the Regulation of the Minister of Home Affairs Number 13 of 2006 concerning Guidelines for Regional Financial Management which states that the regional head as the head of the regional government is the holder of the power of regional financial management and represents the regional government in the ownership of separated regional assets. Thus, there is no difference in the provisions of regional financial control by the Regional Head, both in the Act and in the legislation under it.

So it can be concluded that the power of the Regional Head (Governor/Regent/Mayor) in managing regional finances does not only include the finances in the APBD, but also includes the ownership of separated regional assets. The regional head represents the regional government in the ownership of separated regional assets, so that he has the responsibility as the owner of the regional public company to manage the regional public company, which represents the regional government based on its function and has the duties and responsibilities as the regional financial manager. The division of government duties and authorities is based on the provisions of Article 18 of the 1945 Constitution. Regional financial management uses the budgeting mechanism in the APBD which is prepared to finance Regional Governments in carrying out their main tasks and functions as regional financial managers. Therefore, the authority of regional financial management is no longer the responsibility of the Minister of Finance but the responsibility of the Regional Government represented by the Regional Head.

## **Obstacles in Implementing Execution Seizures Against Perumda BPR Bank Salatiga Assets**

### **a. Execution of Court Decisions That Have Permanent Legal Force**

Execution comes from the word executie which means to carry out a court decision (ten uitvoerlegging vanvonnissen). Execution in the civil sector is to enforce by force a court decision that has permanent legal force with the help of general powers. In another sense, execution in the civil sector means carrying out a decision in a civil case by force in accordance with the applicable laws and

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regulations because the executed party is not willing to carry it out voluntarily.<sup>18</sup> In principle, execution is the realization of the defendant's obligation to fulfill the achievements listed in the judge's decision. Execution of Court Decisions which have permanent legal force (BHT) is the last process of civil case proceedings.

According to M. Yahya Harahap, execution is the execution of a decision by force against the losing party,<sup>19</sup> Meanwhile, according to R. Subekti, execution is the effort of the party won in the decision to get what is rightfully theirs with the help of public powers (police, military) in order to force the defeated party to carry out the verdict.<sup>20</sup> So from the opinion of expert M. Yahya Harahap who explained that execution is an effort made by the winning party to get the rights according to the Court's Decision by force, because the losing party is not willing to carry out the Court's Decision voluntarily. Furthermore, Subekti stated that the execution or execution of the decision implies that the defeated party does not want to carry out the decision voluntarily, so that the decision must be forced on him with the help of legal force. What is meant by legal assistance here is the police, if necessary, military police (Armed Forces).<sup>21</sup>

Execution is an important thing in the litigation process and is the culmination of civil cases carried out against Court Decisions which have permanent legal force (Inkracht van gewisde)<sup>22</sup> Every decision must be executed, because there will be no meaning if the decision cannot be executed.<sup>23</sup> The implementation of the Court's Decision or execution is essentially nothing but the realization of the obligation of the losing party to fulfill the achievements stated in the decision. Basically, court decisions that have permanent legal force can be executed. The implementation of a decision that has permanent legal force can be carried out in two ways, namely voluntarily and by force. The Court's decision is carried out voluntarily, meaning that the losing party actually accepts and fulfills the contents of the Court's Decision without having to be carried out by the Court<sup>24</sup>. Meanwhile, the implementation of the decision by force is carried out because the losing party is not willing and does not have good intentions to carry out the Court's Decision voluntarily.

The implementation of the decision by force is carried out based on the request of the party who wins the case by submitting an application either orally or in writing to the Chairman of the Court who decides the case. Based on application From the party who wins the case, the Head of the District Court summons defeated party to be warned (aanmaning) to run Court decision voluntarily within 8 (eight) days after warned (Article 196 HIR/208 RBG). If within 8 (eight) days the losing party does not carry out the Court's Decision or does not attend after being reprimanded, then the Head of the District Court with his stipulation letter order the Registrar or bailiff to carry out the decision court by confiscation of movable property which estimated to be able to cover the amount of money payments that must be paid by the parties the loser is added to the cost of execution (Article 197 HIR/208 RBG). Basically there are two forms of execution in terms of the targets to be achieved by the legal relationship listed in the court's decision to be fulfilled in accordance with the decision, namely real execution and execution of money payments.<sup>25</sup> Execution of payment of a sum of money, the object of the execution is an amount of money that must be paid by the Defendant to the Plaintiff. If the verdict contains a penalty for paying a sum of money, it means that the Defendant is forced to pay that amount to the Plaintiff (the winning party) by selling the auction of the Defendant's assets.<sup>26</sup> Seizure of execution is a continuation of a warning in the process of executing a payment of a certain amount of money. Execution confiscation is the confiscation of the Defendant's assets after the warning period is exceeded, which is intended as a guarantor of the amount of money that must be paid to the Plaintiff by confiscating and selling the auction of the Defendant's assets which is carried out at the stage of the process of the case concerned already has a decision that has permanent legal force and confiscations carried out at the execution stage.<sup>27</sup> The execution process is carried out by confiscation of assets.

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<sup>18</sup> Ibid. p.69

<sup>19</sup> M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata ed. Ke-2*, (Jakarta: SinarGrafika, 2005), p 2.

<sup>20</sup> Subekti, *Hukum Acara Perdata*, Bandung, (Bandung: Bina Cipta, 1997. Hal. 128.

<sup>21</sup> Ralang Hartati dan Syafrida, Hambatan Dalam Eksekusi Perkara Perdata, *Adil Jurnal Hukum* Vol. 12 No.1, 2021, p.91.

<sup>22</sup> Lilik Mulyadi, *Hukum Acara Perdata Teori dan Praktek Peradilan di Indonesia*, cet.2.ed.revisi, (Jakarta:Djambataan,2002), p. 276.

<sup>23</sup> Adian Taluke, Eksekusi Terhadap Perkara Perdata Yang Telah Mempunyai Kekuatan Hukum Tetap (Ingkraah) Atas Perintah Hakim Dibawah Pimpinan Ketua Pengadilan Negeri, *Lex Privatum*, Vol. 1 No. 4, 2013, p. 24.

<sup>24</sup> Adityo Wikanto, Sarudin Yudowibowo Harjono, *Eksekusi Riil dalam Perkara Perdata tentang Pengosongan Tanah dan Bangunan Rumah*, *Jurnal Verstek* Vol2, 2014, p 2

<sup>25</sup> M. Yahya Harahap, *Op.Cit* p.23.

<sup>26</sup> Ibid. P. 65.

<sup>27</sup> Ibid, p. 68-69

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### **b. Barriers to Execution of Execution Seizures Against Perumda BPR Bank Salatiga Assets**

Basically, court decisions that have permanent legal force can be executed. However, in practice, it turns out that the implementation of Court Decisions is very rarely realized voluntarily because of the lack of good faith from the losing party. In addition, there are often obstacles in the execution of executions that result in the non-achievement or non-fulfillment of the rights of the winning party. Such is the case in the case of Perumda Bank BPR Salatiga, where (Kusjadi, Soenardjo, and Yoenanto Sinung Noegroho) are customers of Perumda BPR Bank Salatiga since 2008, which has placed a number of funds in the form of Time Deposit funds at Bank BPR Salatiga gradually with a total of Rp.2,372,000,000,- (two billion three hundred and seventy-two million rupiah) consisting of 14 (fourteen) time deposit sheets for a period of approximately 5 years, namely January 17, 2011 to February 1, 2016, which in turn creates a legal relationship between the Customer and Perumda BPR Bank Salatiga which binds both of them to perform their rights and obligations.

Whereas when the Customer wishes to withdraw all of his matured deposit funds, Perumda Bank BPR Salatiga cannot pay the amount of money recorded in the time deposit bill for various reasons. So that in the end the Customer has made legal efforts through the Salatiga District Court and has received Decision No. 72/Pdt.G/2018/PN.Slt Jo. No. 283/Pdt/2019/PT.Smg Jo. No. 155K/Pdt/2020 and has permanent legal force, in essence the Court's Decision obliges Perumda BPR Bank Salatiga to pay compensation to customers due to the actions of Perumda BPR Bank Salatiga not paying the amount of money to customers recorded in the Time Deposit Bilyet is a acts that violate the subjective rights of others. So it is clear that Perumda Bank BPR Salatiga has committed an unlawful act.

In this case, both Perumda BPR Bank Salatiga did not have the good faith to implement the contents of the decision, so customers who felt aggrieved made other efforts, namely submitting a request for execution to the Salatiga District Court. Furthermore, the Salatiga District Court gave a warning (aanmaning) or a warning to Perumda BPR Bank Salatiga to implement the decision within a certain period of time, but Perumda BPR Bank Salatiga did not want to implement the decision to pay for the losses suffered by the customer. By not implementing the Court Decision voluntarily by Perumda BPR Bank Salatiga within the warning period (aanmaning), it will be difficult for customers to get compensation from Perumda BPR Bank Salatiga, because when customers want to apply for confiscation of assets belonging to Perumda BPR Bank Salatiga this is not possible and very difficult to implement, because Perumda BPR Bank Salatiga is a Regional Public Company whose capital is owned by a region and is not divided into shares, all of which come from separated regional assets so that the assets of Perumda BPR Bank Salatiga cannot be executed. The obstacle to confiscation of assets at Perumda BPR Salatiga is because there is Article 50 of Law no. 1 of 2014 concerning the Treasury of any State party is prohibited from confiscation of; money or securities belonging to the state/region either in the government agency or with a third party, money that must be deposited by a third party to the state/region, movable goods belonging to the state/region either in the government agency or with a third party, goods not movable property and other property rights belonging to the state/region, and property of third parties controlled by the state/region that are needed for the implementation of government duties.

Based on Article 50 of Law no. 1 of 2014 concerning the State Treasury, customers who are harmed as a result of unlawful acts committed by Perumda BPR Bank Salatiga by not making payments to Customer's time deposits, cannot carry out confiscation actions on finances and assets of Perumda BPR Bank Salatiga because regional assets are not can be confiscated either in the form of money or other assets. So based on this, 50 Law no. 1 of 2014 concerning the State Treasury proved to have caused an injustice and legal uncertainty for the community, in this case the customer of Perumda BPR Bank Salatiga, as a result all obligations for payment of customer losses by Perumda BPR Bank Salatiga based on a court decision that has obtained legal force are still prevented and not can be carried out. Where the article does protect all assets owned by the state and the region, and this provision cannot be interfered with by anyone, even by the decision of the Judicial Body which has permanent legal force. Therefore, what is the right of the customer will not be fulfilled. This shows that the customer is very disadvantaged because his rights are not fulfilled and he does not get justice and legal certainty.

Indeed, based on Article 50 of Law no. 1 of 2014 concerning the State Treasury, regional assets cannot be confiscated. However, this does not reduce the form of fulfilling the obligations of the Salatiga City Government (Salatiga City Government) as the owner of Perumda BPR Bank Salatiga, which should fulfill its obligations as stipulated in Law no. 17 of 2003 concerning State Finances, to allocate funds to increase equity participation to pay for customer losses, if Perumda BPR Bank Salatiga does not want to be responsible and is unable to fulfill its obligations in the form of compensation payments to customers, the Salatiga City Government (Salatiga City Government) also participates. Jointly and severally pay for the loss. This is the obligation of the Salatiga City Government as the owner of Perumda Bank BPR Salatiga. Which can be proven as follows:

"Article 1 point 12 of the Salatiga City Regulation Number 5 of 2020 concerning Regional Public Company Rural Banks, Bank Salatiga, it is stated that the entire capital of Perumda BPR Salatiga is owned by the Regional Government and is not divided into shares".

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"Article 1 point 2 of the Salatiga City Regulation Number 5 of 2020 concerning Regional Public Company Rural Banks, Bank Salatiga, states that the Regional Government is the mayor as an element of the Regional Government organizer who leads the implementation of government affairs which are the authority of the autonomous region".

"Article 15 of the Salatiga City Regional Regulation Number 5 of 2020 concerning Regional Public Company Rural Banks, Bank Salatiga, it is stated that the organizational structure of Perumda BPR Bank Salatiga consists of KPM, Supervisory Board and Directors".

"Article 17 paragraph (1) of the Salatiga City Regional Regulation Number 5 of 2020 concerning Regional Public Company Rural Banks, Bank Salatiga, it is stated that the Mayor is the holder of the power to manage regional finances".

Based on this, the Mayor holds the highest authority and all authorities that are not delegated to the Board of Directors or the Supervisory Board. Therefore, it is clear that the Mayor, in this case the Salatiga City Government, is a part or organ of Perumda BPR Bank Salatiga. In addition, the Salatiga City Government is the holder of the highest power of Perumda BPR Bank Salatiga and the capital of Perumda BPR Bank Salatiga is owned or comes from the Salatiga City Government. The only way in solving problems related to Perumda BPR Bank Salatiga which is unable or not responsible for paying losses to customers, then the Customer can only wait for compensation payments depending on the availability of the Salatiga City Government to want or not to implement the decision by allocating the funds. or increase their capital participation in the budget of funds originating from the APBD, but if the obligation is not carried out voluntarily by the Salatiga City Government, the Salatiga District Court Decision that wins the Customer is only a victory on paper, because the decision has no coercive power (executory), which means that there is no power to implement what is applied in the decision. So that the key to payment for losses suffered by Perumda BPR Bank Salatiga Customers is only based on good faith from the Salatiga City Government, without the good faith of the Salatiga City Government to allocate funds or increase capital participation to pay customer losses, there is no certainty for customers to get the right.

In this case, Perumda BPR Bank Salatiga does not want to fulfill its obligations in the form of payment of losses suffered by customers and the Salatiga City Government is also not responsible for the losses of customers who do not allocate funds or increase their capital participation from the APBD, under the pretext and shelter in Article 50 of the Law. No. 1 of 2004 concerning the State Treasury, then there is no longer any solution for the Customer, moreover there is no regulation regarding the procedure for the implementation of the payment of state/regional obligations. So in the end, customers as justice seekers have reached a dead end when they have problems and face the Salatiga City Government as a Regional Government, even though the Regional Government should be obliged to protect and guarantee the fulfillment of the implementation of community rights and have the same position before the law as mandated in Article 27 paragraph (1), 28D paragraph (1), 28H paragraph (4), 28I paragraph (2), and 28J paragraph (1) of the 1945 Constitution.

By not paying compensation to Perumda BPR Bank Salatiga Customers by the Salatiga City Government, it can be said that the Salatiga City Government has not fully implemented the State's obligations including the implementation of court decisions as stated in the Elucidation of Article 9 letter e of Law no. 17 of 2007 concerning State Finance. Regarding the attitude of the Salatiga City Government, based on PP No. 57 of 2007 concerning Regional Financial Management, the Minister of Home Affairs and the Salatiga City DPRD can carry out supervision and guidance to the Salatiga City Government. Because the Salatiga City Government should include the bill in the APBD as regulated in Article 3 paragraph (6) of Law no. 17 of 2003 concerning State Finance. Because the source of regional finance comes from the APBD, the payment of compensation which is a regional obligation must be allocated in the APBD.

The problem regarding Article 50 of Law No.1 of 2004 concerning the State Treasury was submitted to the Constitutional Court for review which was decided on Thursday, November 19, 2009. With the discussion on examining the constitutionality of Article 50 of Law no. 1 of 2004 concerning the State Treasury against the 1945 Constitution, which creates a lack of legal certainty due to the obstruction of the Petitioner's right to obtain guarantees for reimbursement of funds because the Petitioner cannot confiscate assets in the form of buildings and official cars of the Surabaya City Government, because of Article 50 letter d of Law No. . 1 of 2004 prohibits the confiscation of immovable property and other property rights belonging to the state/region. So that the existence of this article has hurt the sense of justice and has caused injustice and legal uncertainty for the public, resulting in discrimination against the rights and authorities of the public constitution, as stated in the Decision of the Constitutional Court of the Republic of Indonesia No. 25/PUU-VII/2009. Application for Judicial Review of Article 50 of Law no. 1 of 2004 concerning the State Treasury at the Constitutional Court which was submitted by the Petitioner was rejected entirely by the Constitutional Court. On the grounds that Article 50 of Law No.1 of 2004 concerning the State Treasury does not conflict with the 1945 Constitution.

With the examination of Article 50 of Law no. 1 of 2004 concerning the State Treasury against the 1945 Constitution at the Supreme Court, it shows that Article 50 of Law No. 1 of 2004 concerning the State Treasury is indeed unsatisfactory and does not fulfill the sense of justice and certainty in society. The article should have been made to create a sense of justice in the community, where the position of the community and the region in the eyes of the law must have the same position. If the region does not fulfill its obligations, the regional assets should be confiscated and can be auctioned through the regional auction office, then the money



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from the sale of these assets can be used to pay their obligations, so that things do not happen that harm the rights of the community. However, since the enactment of Article 50 of Law no. 1 of 2014 concerning the State Treasury, which protects regional assets that cannot be contested by any party, even with a court decision that has permanent legal force.

### **IV. CONCLUSIONS AND SUGGESTIONS**

#### **a. Conclusion**

Regional financial management of the assets of the Regional Public Company (Perumda) is the authority and responsibility of the Regional Government represented by the Regional Head (Governor/Regent/Mayor) who is the owner of capital as well as the owner of the Perumda. Regional Heads in managing regional finances use the budgeting mechanism in the APBD which is prepared to finance Regional Governments in carrying out their duties and functions as regional financial managers. However, the Regional Head in managing regional finances does not only cover the finances in the APBD, but also includes the ownership of separated regional assets sourced from the APBD. As regulated in Article 3 paragraph (1) letter a PP No. 54 of 2017 concerning BUMD, Article 43 paragraph (1) of Law no. 1 of 2004 concerning the State Treasury, Article 5 paragraph (1) PP no. 58 of 2005 concerning Regional Financial Management and Article 5 paragraph (1) of the Regulation of the Minister of Home Affairs Number 13 of 2006 concerning Guidelines for Regional Financial Management.

Obstacles in the implementation of the confiscation of execution of assets of Perumda BPR Bank Salatiga because there is Article 50 of Law no. 1 of 2014 concerning the State Treasury which prohibits the execution of confiscation of assets belonging to the region, because Perumda BPR Bank Salatiga is a Regional Public Company whose capital is owned by the Salatiga City Government which entirely comes from separated regional assets. So that the assets of Perumda BPR Bank Salatiga cannot be confiscated. In addition, there are no regulations that regulate the procedures for the implementation of payment of regional obligations. So in the end the customer as the party seeking justice whose rights have been harmed has reached a dead end.

#### **b. Suggestion**

The Minister of Home Affairs and DPRD must supervise and guide the Regional Government in managing regional finances in carrying out their regional obligations. It is necessary to establish legislation that regulates the implementation procedures. payment of state/regional obligations and collection of state/regional obligations arising from court decisions. In order to guarantee legal certainty and legal guarantees for citizens' collection rights.

### **REFERENCES**

#### **Book and Journal:**

- 1) Atmadja, A., P., S., 1986 Mekanisme Pertanggungjawaban Keuangan Negara, PT. Gramedia, Jakarta
- 2) Bambang, W., 2002, Penelitian Hukum Dalam Praktek, Edisi 1, Cet ke 3, Sinar Grafika, Jakarta
- 3) Bündner Bauernverband., Posma Sariguna Johnson, and Alvani Amaerita Harefa, 'Financial Technology, Regulation and Banking Adaptation in Indonesia', *Fundamental Management Journal*, 3.1 (2018), 1–11  
<<http://ejournal.uki.ac.id/index.php/jm/article/view/715>>
- 4) Djumhanna, M., 2006, Hukum Perbankan di Indoensia, Citra Aditya, Bandung
- 5) Doli Siregar D, 2004, Manajemen Aset, PT. Gramedia Pustaka Utama, Jakarta
- 6) Fajar Sugiarto, *Economic Analiysis of Law (Seri Analisis Ke-Ekonomian Tentang Hukum)*, 1st edn (Jakarta: Kencana Prenada Media Group, 2013).
- 7) Harahap, M., Y., 2005, Ruang Lingkup Permasalahan Eksekusi Bidang Perdata ed. Ke-2, SinarGrafika, Jakarta
- 8) Hartati, R., dan Syafrida, 2021, Hambatan Dalam Eksekusi Perkara Perdata, *Adil Jurnal Hukum* Vol. 12 No.1
- 9) Hasan, Zulfiqar, 'Conversion of Conventional Banks into Islamic Banks: The Case of Bangladesh', *International Journal of Ethics in Social Sciences*, 4.1 (2016), 63–78
- 10) Mertokusumo, S., *Penemuan Hukum Suatu Pengantar*, Penerbit Universitas Atma Jaya, Yogyakarta
- 11) Mulyadi, L., 2002, *Hukum Acara Perdata Teori dan Praktek Peradilan di Indonesia*, cet.2.ed.revisi, Djambataan, Jakarta
- 12) Nia K. Winayanti, 2015., *Hand-out Pengertian Keuangan Negara*, FH Unpas
- 13) Soekanto, S., dan Mamudji, S., 2013, *Penelitian Hukum Normatif*, Raja Grafindo Persada, Jakarta
- 14) Soleh, C., dan Rocmansjah, H., 2010, *Pengelolaan Keuangan dan Aset Daerah*, Fokusmedia, Jakarta
- 15) Subekti, 1997, *Hukum Acara Perdata*, Bina Cipta, Bandung.
- 16) Suyuthi, W., 2004, *Sita Eksekusi Praktek Kejurusitaan Pengadilan*, PT. Tatanusa, Jakarta
- 17) Syahuri, Taufiqurrohman, 'Politik Hukum Perekonomian Berdasarkan Pasal 33 UUD 1945', *Jurnal Konstitusi*, 9.2 (2012), 243–257
- 18) Syahuri, Taufiqurrohman, 'Politik Hukum Perekonomian Berdasarkan Pasal 33 UUD 1945', *Jurnal Konstitusi*, 9.2 (2012), 243–257

## **Barriers to The Execution of Seizure of Execution against Court Decisions That Have Permanent Legal Force (Example is The Case of Confiscation of Execution of Assets of Perumda Salatiga)**

- 19) Taluke, A., 2013, Eksekusi Terhadap Perkara Perdata Yang Telah Mempunyai Kekuatan Hukum Tetap (Ingkrah) Atas Perintah Hakim Dibawah Pimpinan Ketua Pengadilan Negeri, *Lex Privatum*, Vol. 1 No. 4.
- 20) Telly Sumbu, 'Hubungan Pemerintah Pusat Dengan Pemerintah Daerah Dalam Kerangka Pengelolaan Keuangan Negara Dan Daerah', *Jurnal Hukum IUS QUIA IUSTUM*, 17.4 (2010), 567–588
- 21) Telly Sumbu, 'Hubungan Pemerintah Pusat Dengan Pemerintah Daerah Dalam Kerangka Pengelolaan Keuangan Negara Dan Daerah', *Jurnal Hukum IUS QUIA IUSTUM*, 17.4 (2010), 567–588
- 22) Tjandra, W., R., 2006, *Hukum Keuangan Negara*, Grasindo, Jakarta
- 23) Wikanto, A., Harjono, S., Y., 2014, Eksekusi Riil dalam Perkara Perdata tentang Pengosongan Tanah dan Bangunan Rumah, *Jurnal Verstek Vol 2*.

### **Legislation:**

- 1) 1945 Constitution of the Republic of Indonesia
- 2) Civil Procedure Code
- 3) Law Number 5 of 1962 concerning Regional Companies
- 4) Law Number 17 of 2003 concerning State Finance
- 5) Law Number 1 Year 2004 concerning State Treasury
- 6) Law Number 23 of 2014 concerning Regional Government
- 7) Government Regulation Number 25 of 2000 concerning Authority of the Government and Provinces as Autonomous Regions
- 8) Government Regulation Number 58 of 2005 concerning Regional Financial Management
- 9) Government Regulation Number 54 of 2017 concerning Regional Owned Enterprises (BUMD)
- 10) Minister of Home Affairs Regulation Number 13 of 2006 concerning Guidelines for Regional Financial Management.
- 11) Salatiga City Regulation Number 5 of 2020 concerning Regional Public Company Rural Bank Salatiga Bank.

### **Internet:**

- 1) <https://bppk.kemenkeu.go.id/content/berita/balai-diklat-keuangan-malang-penjualan-kekayaan-regionyang-separated-di-mata-peraturan-peraturan-keuangan-negara-by-dr-achmat-subekan-se-msi-2019-11-05-cbfc2a4/>, accessed on November 8, 2021.
- 2) <https://www.coursehero.com/file/ptopmd/B-Type-Type-Aset-Daerah-Aset-area-is-all-kekayaan-area-yang-owned/>, accessed on November 8, 2021.

### **Etc:**

- 1) Decision of the Constitutional Court of the Republic of Indonesia No. 25/PUU-VII/2009
- 2) District Court Decision No. 72/Pdt.G/2018/PN.Slt
- 3) High Court Decision No. 283/Pdt/2019/PT.Smg
- 4) Supreme Court Decision No. 155K/Pdt/2020