

The Digest:

Journal of Jurisprudence and Legisprudence

Vol. 5 Issue 1 (2024) 33-60

DOI: <https://doi.org/10.15294/digest.v5i1.3339>

Available online since: June 30, 2024

THE DIGEST Journal of
*Jurisprudence &
Legisprudence*

Inaccuracy of the State Attorney in Drafting a Lawsuit that Causes a Non- Executable Judgement

(Case Study in Civil Case No. 06/Pdt. G/2015/PN.Bbs)

Natalia Diah Ayu Puspitasari

Tanah Laut District Attorney's Office in the field of Civil and State,
South Kalimantan, Indonesia

natalia.diah.ayu.puspita@kejaksaan.go.id

Maria Acynta Christy ✉

Faculty of Law, Universitas Atma Jaya Yogyakarta, Yogyakarta,
Indonesia

maria.christy@uajy.ac.id

✉ Corresponding email: maria.christy@uajy.ac.id

Abstract

Verdict Number: 06/Pdt.G/2015/PN.G/2015/PN.Bbs cannot be executed, even though it has become *inkracht* (final and binding). This situation contradicts the indicators of law enforcement assessment, which state that civil courts should not face unreasonable delays, must enforce decisions effectively, and must uphold the objectives of achieving justice, expediency, and legal certainty. This research examines

the plaintiff's errors in preparing the lawsuit, which led to the non-executable verdict, and explores how to properly draft a lawsuit to ensure its execution. This study is normative legal research, where the research materials are analyzed qualitatively and presented descriptively. The findings of this research reveal that several mistakes made by the plaintiff contributed to the verdict's non-execution. These errors include the plaintiff's failure to include non-punitive claims and to attach a request in the lawsuit. The plaintiff also did not provide the title deed for the disputed land, and the *positum* and *petitum* were drafted asynchronously, with the claim for compensation mixed with the request for dowry. It is essential for the plaintiff to be meticulous when drafting the *petitum*, as any errors in this stage can impact the judge's decision. The lawsuit must be prepared thoroughly and specifically, stating the legal grounds and structuring the *petitum* in accordance with these grounds and the factual circumstances. Additionally, the plaintiff should avoid combining compensation claims with requests for *dwangsom* (penal sanctions) in the same *petitum*.

Keywords

State Attorney; Non-Executable Judgment; Lawsuit.

I. Introduction

The civil case examination process aims to resolve cases that manifest in the form of court verdicts. The purpose of the verdict is to end the dispute and determine the law¹. A judge's verdict that has a permanent legal force (*inkracht van gewijsde*) can be executed², in which there are rights and obligations of the parties in the disputed case³. A civil case is settled without the court's assistance if the losing party is voluntarily willing to execute the judgment. However, the losing party is sometimes unwilling to execute the judgment voluntarily, so the court must assist in the forced execution. Several other obstacles may occur in practice that hinder the execution process⁴.

The author examines the forms of the inaccuracy of the State Attorney in preparing the lawsuit that caused the verdict to be non-executable, as occurred in the Brebes District Court Verdict Number 06/Pdt. G/2015/PN.Bbs. This case stems from a dispute between the Perum Perhutani Central Java Regional Division, represented by the State Attorney (from now on referred to as the plaintiff), and Aswantari et al. (from now on referred to as the defendants). The Plaintiff filed a tort claim against the defendants for managing the disputed land

¹ Tutiek Retnowati and Febri Sintya Sari, "Perlawanan Terhadap Eksekusi Putusan Pengadilan (Studi Kasus Putusan Nomor: 04/Pdt.G/2011/PN.JR. Juncto Nomor: 29/Pdt/2012/PT.SBY)," *The Spirit of Law* 6, no. 1 (May 23, 2019): 68–81.

² Asdian Taluke, "Eksekusi Terhadap Perkara Perdata Yang Telah Mempunyai Kekuatan Hukum Tetap (Ingkraah) Atas Perintah Di Bawah Pimpinan Ketua Pengadilan Negeri," *Lex Privatum* 1, no. 4 (2013): 24–35.

³ Donylisan F Romkeny, Rusdin Alauddin, and Faissal Malik, "Juridic Review On Civil Decisions Which Was Not Executed Because Of Resistance In The Tobelo State Court (Judiction Analysis Number 11/Pdt.G/2011/Pn.Tbl)," *Legal Brief* 11, no. 4 (2022): 2722–4643, <https://doi.org/10.35335/legal>.

⁴ Robitum Maftukh Zakariyah and Ahmad Riyadh U.B., "Juridical Overview Regarding the Unenforceability of Court Decisions in Civil Cases That Have Permanent Legal Force (INKRACHT)," *Indonesian Journal of Public Policy Review* 11 (July 31, 2020): 1–7, <https://doi.org/10.21070/ijppr.v11i0.1162>.

without authorization and transferring the cultivated land through leasing, buying, and selling SPPT to third parties. In this case, the object of the dispute was a state forest area controlled and managed by Perum Perhutani Cq. KPH Balapulang. This area is located on the banks of Kali Pemali, Kalenrembet Block, Wlahar Village, Larangan Subdistrict, and Brebes Regency and has an area of 131.1 hectares. The plaintiff objected to the PBB tax return's appearance in the defendant's name.

In contrast, the defendants continued to assert that the SPPT they held proved their ownership of forest land on the disputed land. The Plaintiffs then contacted the Primary Tax Office but did not receive a response until the case was decided in court. The Plaintiffs finally decided to send a letter of cancellation of the SPPT to the Head of the Brebes District Revenue and Financial Management Office Number 937 regarding the cancellation of the collective PBB SPPT on behalf of the defendant. As stated in the petitum of the plaintiff's claim, the plaintiff suffered material and immaterial losses as a result of the actions above, with the statement of the claim in the leading case essentially being as follows:

1. Grant the plaintiff's claim in part.
2. Declare the disputed object as a state forest area whose management is under the plaintiff's authority.
3. Declare the actions of Defendant I up to Defendant XXX (from now on referred to as defendants) as unlawful.
4. The defendants have no right to control and work on the disputed object without the plaintiff's permission and declare that the defendants must immediately cease activities on the disputed object.
5. To order the defendants or any other party that has acquired rights to hand over to the plaintiff the rights to the disputed object in a free, empty, and unencumbered condition.
6. Punish the Defendants to pay material damage jointly and severally after the case is in kracht van gewijsde in the amount of [...].

7. Punishing the Defendants to pay forced labor to the plaintiff in the amount of [...] per day jointly and severally for the delay in implementing the court verdict that has been in kracht van gewijsde.
8. Rejecting Plaintiff's claim for other than and the rest.

This contradicts the verdict of Brebes District Court Number 06/Pdt. G/2015/PN.Bbs, the Defendants filed an appeal that was then decided by Verdict Number 62/Pdt/2016/PT.Smg, which upheld the verdict in the first instance. The Defendants, who were still not satisfied with the verdict of the panel of judges of the Court of Appeal, then filed a cassation appeal, which was decided by Verdict Number 2213/K/Pdt/2016, which also upheld the verdict at the first instance and on appeal. To date, none of these judgments have been implemented by defendants. The verdict of the Panel of Judges at both the *judex facti* and *judex juris* levels essentially upheld the verdict of Brebes District Court Number: 06/Pdt. G/2015/PN. Bbs, which then became legally bound. However, until 2024, the defendants implemented none of the judgments. Protracted stagnation is feared to cause losses to the state that will increase over time and give rise to the potential for legal smuggling by defendants related to land management without rights, leading to criminal acts.

The World Justice Project Rule of Law Index provides eight parameters for successful law enforcement in all countries, including Indonesia. The eight parameters include Constraints on Government Power, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice. According to the overall assessment indicators set by the World Justice Project Rule of Law Index 2022, Indonesia ranks 64 out of 140 countries globally and 9 out of 15 countries in the region (East Asia and Pacific). Indonesia, in terms of the Civil Justice factor, ranks 93 out of 140 countries globally and ranks 11 out of 15 countries

in the region (East Asia and Pacific).⁵ The Civil Justice assessment indicators themselves have assessment sub-factors consisting of several factors as follows:⁶

1. People can access and obtain civil justice.
2. Civil justice is free of discrimination.
3. Civil justice is free of corruption.
4. Civil Courts are free of undue government influence.
5. Civil Courts are not subject to unreasonable delay.
6. Civil Courts are enforced effectively.
7. Alternative dispute resolution mechanisms are accessible, impartial, and effective.

The assessment of law enforcement in civil justice in Indonesia is based on two indicators. The first, "Civil Justice is Not Subject to Unreasonable Delay," assesses the promptness of producing judgments without unreasonable delays. In this indicator, Indonesia ranks 40 out of 142 countries globally and 10 out of 15 in the region. The second indicator, "Civil Justice is Effectively Enforced," measures the effectiveness and timeliness of enforcing civil justice verdicts and judgments. In this indicator, Indonesia ranks 101 out of 142 countries globally and 10 out of 15 in the region.⁷ According to the World Justice Project Rule of Law Index 2022, it is concluded that civil justice law enforcement in Indonesia still ranks low.

Brebes District Court Number 06/Pdt. G/2015/PN.Bbs, which cannot be executed for nine years from the *inkracht* as the object of the author's research based on the sub-factors of the Civil Justice assessment, certainly contradicts the assessment indicator points "Civil Courts Are

⁵ World Justice Project, "The World Justice. Project: Rule of Law Index 2022" (Washington, D.C.: The World Justice Project, 2022): 98.

⁶ *Ibid*, 15

⁷ World Justice Project, "The World Justice Project: Rule of Law Index 2023" (Washington, D.C.: The World Justice Project, 2023)

Not Subject to Unreasonable Delays" and "Civil Courts Are Effectively Enforced". The author compiled several previous studies that have examined similar topics.

First, Rabat, Firdaus, and Danial⁸ state that several factors cause non-executable verdicts that do not meet the formal requirements for executorial verdicts: 1. The judge's mistake, whose legal remedy is to conduct a judicial review; 2. The lawyer's mistake in making the petitum, whose legal remedy is to file a lawsuit again with a lawsuit immediately, and the judge tries it with a simple court; and 3. The state's unwillingness to implement the verdict, whose last resort is to complain to the DPR. Judges need to be careful in making and/or imposing verdicts. At the same time, lawyers must understand and study the format of the lawsuit and be cautious in filing petitums to avoid non-executable verdicts.

Second, Halawa⁹ states that the Panel of Judges who assessed the case as a quo was unfair and lacked legal certainty, so PK verdict No. 37 PK/TUN/2013 could not be implemented, even though the defendants were sentenced to cancel and revoke the Management Rights Certificate No. 1/1993 on behalf of PT Pelindo I. PT Pelindo I (Persero). The HPL certificate holder has the option to take legal action, namely, asking PTUN Medan to declare the execution unenforceable and to measure the land to be executed at its own expense as evidence that the land to be executed is not in accordance with the valuation and fights back through PTUN Medan.

⁸ Dewi Rabat, Firdaus, and Danial, "Legal Efforts for A Ruling of Permanent Legal Force That Cannot Be Executed," *Jurnal Hukum Replik* 10, no. 1 (April 9, 2022): 19–41.

⁹ Soli Megawati Halawa, "Analisis Yuridis Terhadap Pembatalan Dan Pencabutan Sertipikat Hak Pengelolaan Yang Di Dalamnya Terdapat Alas Hak Kepemilikan Atas Tanah Orang Lain (Studi Putusan Nomor 37 PK/TUN/2013)," *Premise Law Journal* 18 (2016): 1–20.

Third, Arzani¹⁰ states that the legal remedy that can be submitted against a verdict that only includes a declaratory judgment that is final and binding is to file a new lawsuit with a condemnatory petition so that it can be executed. In his latest lawsuit, the plaintiff can also demand a *uitvoerbaar bij vooraad* or an immediate verdict because there has already been a previous verdict with permanent legal force.

Fourth, Fauzan and Yunus¹¹ on their results of the research, show that the cause of the verdict cannot be executed even though it has been *inkracht van gewijsde*, one of which is that the amount of obligations/achievements imposed on the defendants is not stipulated in the judgments requested for execution. The applicant for execution has two legal options: filing a new lawsuit to the District Court, even though it is related to the principle of *nebis in idem*, or submitting a review to the Supreme Court.

Fifth, Trisnawati¹² states that the execution at the Bandung District Court does not follow the principles of simple, fast, and cheap justice and does not fulfill the principle of justice for applicants. The lawsuit must be prepared correctly and completely, and the third party who controls the object of execution must be obligated to do so so that the plaintiff does not need to file a new lawsuit again.

The author focuses on the State Attorney's lack of precision in stating the lawsuit, leading to the Defendants' inability to implement the ruling of Court Verdict Number 06/Pdt.G/2015/PN Bbs. This research aims to identify and address the deficiencies in the State

¹⁰ Rezky Apdina Arzani, "Tinjauan Yuridis Terhadap Putusan Declaratoir Yang Tidak Dapat Dieksekusi," *AkMen JURNAL ILMIAH* 15, no. 2 (June 30, 2018): 247–56, <https://e-jurnal.nobel.ac.id/index.php/akmen/article/view/298>.

¹¹ Muhammad Fauzan and Ilyas Yunus, "Studi Kasus Terhadap Putusan Pengadilan Negeri Banda Aceh No. 34/Pdt.G/PN-BNA," *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan* 2, no. 1 (2018): 220–29.

¹² Wati Trisnawati, "Analisis Yuridis Terhadap Putusan Pengadilan Yang Tidak Dapat Dilakukan Eksekusi (Non Executable)," *Jurnal Syntax Admiration* 1, no. 7 (November 2020): 974–90.

Attorney's presentation of the case to promote more excellent care and precision in constructing lawsuits for the State Attorney and other relevant parties in the future.

II. Method

This juridical-normative research examines court verdicts, regulations, and theories or concepts related to nonexecutable verdicts. The data studied were secondary: court verdicts, books, laws and regulations, legal journals, and other materials related to the research topic. The study uses a documentary approach, and the data obtained are systematically grouped to understand the discussion clearly. The primary data collected will be from verdicts related to the case and literature about civil court verdicts. Problems in the primary verdict data will be formulated, then the data will be compared with literature or legal studies, and conclusions will be drawn. The processed data are presented descriptively to describe the research results. The data underwent qualitative analysis through systematization, synchronization, interpretation, and construction to tackle these issues. This involved organizing the supporting data, aligning the collected data with existing legal literature, carrying out legal interpretations according to relevant laws and regulations, and developing ideas that reflect the analysis results by resolving the tension between '*das solen*' and '*das sein*'.

III. Forms of State Attorney Inaccuracy in Drafting a Lawsuit in Civil Case No. 06/Pdt.G/2015/PN.Bbs that Resulted in a Non-Executable Judgement

The court must carry out execution as stipulated in Article 54(2) of Law No. 48 of 2009 concerning Judicial Power, which stipulates that the clerk and substitute clerk, chaired by the Chief Justice, are responsible for executing court verdicts in civil cases¹³. The executive power of a court judgment is the power to enforce the content of the judgment through the state. "*For the Sake of Justice based on God Almighty*" gives executorial power to court verdicts in Indonesia, as stipulated in Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. The verdict can be executed and accounted for by '*God Almighty*' because of the '*irah-irah*'¹⁴. Thus, the execution principle is a forced effort to execute a verdict with permanent legal force¹⁵. However, several problems arise in the execution of civil cases that cause the verdict to be unenforceable by the court, which is referred to as a non-executable verdict. Issues in executing civil cases can slow down or prevent the winning party from enjoying the court's verdicts¹⁶. Hartini et al.

¹³ Dewi Rayati, Firdaus, and Danial, "Legal Efforts for A Ruling of Permanent Legal Force That Cannot Be Executed", *Jurnal Hukum Replik* 10, no. 1 (2020): 19–41.

¹⁴ Happy Indah Hapsari, "Studi Putusan Yang Tidak Dapat Dieksekusi (Non Eksekutabel) Dalam Perkara Perdataa (Studi Putusan Nomor 16/Pdt.Plw/2014/PN. Kdl)," *Jurnal Verstek* 6, no. 2 (2018): 11–19.

¹⁵ G Anand and B.S.A. Subagyo, "Juridicial Execution of Court Verdict Problem in Civil Case in Indonesia," *Studia Humanitatis*, no. 2 (2019): 1–14.

¹⁶ Irma Garwan, "Ideal Execution of Civil, Cases Based on Principles of Justice to Create a Simple and Low-Cost Judiciary," *Journal of Humanities and Social Sciences Studies (JHSSS)* 2, no. 6 (2020): 70–77, <https://doi.org/10.32996/jhss>.

mentioned several obstacles in executing judgments, including¹⁷: a. The costs that must be borne by the execution applicant, such as official fees, execution security costs, transportation costs, and storage costs for movable goods belonging to the execution respondent. b. Lack of personnel who execute judgments. Lack of personnel who carry out executions; and c. resistance from the execution respondent who obstructs the execution process by mobilizing the masses. Anand and Subagyo added that non-executable verdicts are caused by factors¹⁸, including a. Absence of wealth to be executed; b. The object of the execution moves to a third party; c. The object of execution is transferred to a third party; d. The object of the execution is leased to a third party; e. The object of execution is pledged to a third party; f. The object of the execution becomes a state property; and g. The execution object is located abroad.

Rumadan identified several problematic legal issues in executing civil court verdicts¹⁹, including a. The execution of the verdict could not be carried out due to several obstacles: 1) the object of the auction is the assets of a State-Owned Enterprise, 2) the assets of the execution respondent do not exist, and 3) the orders of the verdict is declaratory; b. Delegation (request for assistance) in executing court verdicts; c. Third Party resistance to executing objects outside the court's jurisdiction; d. The execution object is controlled by a third party; e. Two conflicting court verdicts; and f. Resistance from a third party. Gayo mentions several obstacles in executing court verdicts with

¹⁷ Sri Hartini, Setiati Widiastuti, and Iffah Nurhayati, "Eksekusi Putusan Hakim Dalam Sengketa Perdata Di Pengadilan Negeri Sleman," *Jurnal Civics* 14, no. 2 (October 2017): 128–38.

¹⁸ Anand and Subagyo, "Juridicial Execution of Court Verdict Problem in Civil Case in Indonesia."

¹⁹ Ismail Rumadan, "Enforcement of Court Decision Regarding Payment of a Sum of Money in Civil Disputes to Support the Ease of Doing Business in Indonesia," *KLRI Journal of Law and Legislation* 10, no. 2 (2020): 389–414.

permanent legal force²⁰: a. The goods to be executed do not match what is stated in this judgment; b. The object of execution is unclear; c. The object of execution does not exist; d. The object of execution was destroyed; e. The object of execution has become a property of the state; f. The object is located abroad; g. Limited human resources, facilities, and infrastructure to support execution.

The legal concept of execution in civil procedural law that can provide a sense of justice to applicants begins with formulating a careful and precise lawsuit. The inaccurate preparation of a lawsuit letter can result in the imposition of a judge's verdict, which is complex or even unenforceable because judges in civil courts are bound by the principle of *non-ultra petita*. In this discussion, the author describes the Plaintiff's inaccuracy in preparing a lawsuit related to Civil Case No. 06/Pdt. G/2015/PN.Bbs, as follows:

a. Plaintiffs Include Non-Punitive Requests

The Plaintiff's first inaccuracy is that in the petitum of lawsuit point 4, the plaintiff includes a request that is not condemnatory but declaratory. Yahya Harahap²¹ explains that a punitive verdict is formulated in the sentence "punish or order," for example: punish or order to deliver an item; vacate a plot of land or house; perform a specific action; stop an action or situation; and make a payment of money.

Every condemnatory verdict is inherently executorial in nature, so condemnatory verdicts can be executed if the defendant does not want to implement the verdict voluntarily. However, point 4 of the Plaintiff's petition reads: "Declare that the Defendants do not have the right to control and work on the disputed object without

²⁰ Ahyar Ari Gayo, "Problematic in The Civil Decision Execution Process in Indonesia to Realize Court Excellence," *Jurnal Penelitian Hukum De Jure* 22, no. 4 (December 16, 2022): 551, <https://doi.org/10.30641/dejure.2022.v22.551-560>.

²¹ Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, (Jakarta: Sinar Grafika, 2019): 16.

permission from Perum Perhutani and declare the Defendants to stop all activities on the disputed object immediately." The word 'declare' in petitum point 4 is not a condemnatory request but only declaratory. Applying the phrase implies that the verdict will also be declaratory, limited to a statement, so its implementation cannot be enforced. This contrasts with a condemnatory verdict, the implementation of which can be enforced.

The declaratory verdict then led to the defendant, who controlled the disputed object without rights, not feeling deterred, so he unlawfully transferred the disputed object's land rights to a third party. The transfer of the land rights of the disputed object from the defendant to a third party caused the verdict of Brebes District Court Number 06/Pdt. G/2015/PN.Bbs became non-executable.

b. The plaintiff did not attach the title to the Disputed Object Land in the form of a decree granting management rights issued by the Ministry of ATR/BPN to Perum Perhutani.

The plaintiff did not attach the basis for the rights to the HPL attached to the disputed land object in the form of a Decree on Granting Management Rights issued by the Ministry of ATR/BPN to Perum Perhutani. The plaintiff and Perum Perhutani, in their examination at the trial, only attached the Decree of the Minister of Forestry of the Republic of Indonesia Number: SK.4774/Menhut-VII/KUH/2014 and Number: SK.4663/Menhut-VII/KUH/2014 concerning the Determination of Forest Areas managed by Perum Perhutani to prove the plaintiff's right or legal standing to the land object of dispute. In this case, the plaintiff and Perum Perhutani did not attach documentary evidence in the form of a decree granting HPL to Perum Perhutani. This should be the basis for rights that strengthen the position of Perum Perhutani as the HPL holder, considering that the HPL granted is limited to the subjects regulated in Article 5, paragraph (1) of PP No. 18 of 2021, namely Central

Government Agencies, Regional Governments, State-Owned Enterprises / Regional-Owned Enterprises, State-Owned Legal Entities / Regional-Owned Legal Entities, Land Bank Agencies, or a legal entity appointed by the Central Government. Looking at the provisions of this article, this study provides strong evidence that Perum Perhutani, based on Government Regulation Number 72 of 2010, is a State-Owned Enterprise (BUMN) that has the task of providing services for public benefit as well as generating profits based on the principles of company management so that it is declared as a party that can legally own HPL. The legal subject of the HPL holder in this provision is the legal subject of a legal entity or *rechtspersoon* and not a *natuurlijke persoon*.

Furthermore, based on the provisions in Article 2 in conjunction with Article 3 of the Minister of ATR/BPN Regulation Number 18 of 2021, the determination of Management Rights over state land is carried out by the Minister of ATR/BPN and the said determination is stated in the form of a Decree of the Head of the Regional Office of the Provincial Land Agency, Head of the Land Office or an appointed official covering the Applicant's work area, in this case the Head of the BPN Regional Office for Central Java Province. Regarding the HPL Decree as the basis for the plaintiff's rights, this correlates with petitum point 2 of the plaintiff's lawsuit letter, which states that Perum Perhutani has legal rights and the authority to manage the state forest area, which is the object of the dispute. To request a legal statement related to the management of the disputed object, which is the authority of Perum Perhutani, the basis of the rights must also be stated, namely, based on the HPL Decree issued by the relevant Official from the Ministry of ATR/BPN, but in this petitum, it is not mentioned. A lawsuit petition that does not explicitly state what is being requested will cause the lawsuit to become an obscured libel, which could legally result in it not being

accepted. This is in line with Harahap's opinion that the plaintiff must prepare a clear petitum that outlines the main points of the claim by stating each main claim that the plaintiff wants. The petitum must be submitted and charged to the defendant by the plaintiff at the end of the lawsuit.²²

Other juridical implications could occur if, in this case, the HPL Decree for the disputed land object was not attached or proven at trial, which could create a loophole or risk of an exception being raised by the Legal Counsel; however, in this case, the Legal Counsel for the Defendants did not raise an exception related to the basis of rights. The plaintiff was against the object of the dispute, but this caused the letter to be incomplete. The further juridical impact of not including or attaching the Perum Perhutani HPL Decree will make it difficult to follow up on the Agreement Granting Use Rights to Third Parties, where this effort can be an alternative for executing to recover losses suffered by Perum Perhutani.

c. The plaintiff prepared the Posita and Petitum asynchronously or did not negate each other.

The plaintiff's third inaccuracy was the lack of synchronization with posita point 7 (in the verdict) and the petitum of claim point 7 (in the verdict). Posita point 7 of the lawsuit letter stated that the plaintiff's material loss was that the plaintiff had to reforest the forest area due to sugarcane and secondary crop planting activities carried out by the defendants. The reforestation costs requested by the Plaintiff and Perum and Perhutani amounted to IDR 20,648,250,000 (twenty billion six hundred forty-eight million two hundred and fifty thousand rupiah). However, in the petitum of the lawsuit, point 7 only states: "punish the Defendants to pay material compensation of Rp20,648,250,000 (twenty billion six hundred

²² Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2019): 66.

forty-eight million two hundred and fifty thousand rupiahs)." The meaning of the material losses requested in the petitum of the lawsuit is unclear, namely, whether Perum Perhutani's material losses are for carrying out reforestation or Perum Perhutani's losses due to sugarcane planting activities, which are then commercialized by the defendants who control the land subject to the dispute.

d. In his Petitum, the Plaintiff mixed the Petitum Application for Compensation with the *Dwangsom* Application.

The fourth inaccuracy of the plaintiff is that in the petitum of lawsuit point 7, the plaintiff stated to punish the Defendants for paying compensation amounting to IDR 21,648,250,000 (twenty-one billion six hundred forty-eight million two hundred and fifty thousand rupiahs). Still, the plaintiff also included a request for *dwangsom* in petitum point 8, namely IDR 500,000 (five hundred) thousand rupiah per day for each delay in implementing the verdict. The explanation of Article 225 HIR emphasizes that *dwangsom* must be imposed on the judge's verdict to punish the losing party for committing an act. The *dwangsom* petition at point 7 a quo is not specific and unclear because the *dwangsom* should have been filed against the claim for land vacation over the disputed object, as requested by the plaintiff at point 5 of the petitum. Bearing in mind that there is a request for payment of compensation, which the plaintiff also asks at point 7. Several points of negligence on the part of the plaintiff, as described above, ultimately caused the plaintiff's lawsuit to become illusory and resulted in the judge's verdict being non-executable.

IV. Drafting an Appropriate Lawsuit in Civil Case No. 06/Pdt.G/2015/PN.Bbs to Make it Executable

Although Articles 118 and 120 HIR do not stipulate the content or requirements for lawsuit formulation, practice tends to require lawsuit formulations that contain clear fundamentals and petitums in accordance with the dagvaarding system²³. The lawsuit letter must be prepared with mastery of the subject matter, related legal provisions, and extensive knowledge to meet the principles of a clear, complete, and perfect lawsuit. A lawsuit letter that does not fulfill these three principles will result in losses in costs, time, and even a less professional impression²⁴. The author explains how to properly prepare a lawsuit for Civil Case No. 06/Pdt in this discussion. G/2015/PN.Bbs to avoid non-executable verdicts are as follows:

a. The Plaintiff Must Include A Condemnatory Petitem

The basic principle of civil execution is that the verdict handed down is a condemnatory or punitive verdict, which is generally found in 'contentious' cases, namely cases that contain a conflict between the interests of the plaintiff and defendant. However, there are still declaratory verdicts in contention cases such as the quo case. The plaintiff should include the word "punish" in demand for the vacation of the state forest area, which is the object of the dispute, so that the order decided by the judge will later become a condemnatory verdict so that for its execution at a later date coercive measures can be taken.

²³ *Ibid*, 53.

²⁴ Ending Nursolih, "Analisis Penyusunan Surat Gugatan," *Jurnal Ilmiah Galuh Justisi* 7, no. 1 (March 2019): 87–97.

A verdict that is only stated or declaratory will impact the unlawful acts that continue to be carried out by defendants on the disputed object land so that sugarcane planting activities are not stopped on the disputed land. The omission of activities on land subject to dispute does not rule out the possibility that other unlawful activities, such as the illegal transfer of rights to third parties, can also be carried out. Control of the object of dispute by a third party outside the litigant will hamper the execution process, as stated in the judge's verdict point 5, which essentially punishes the defendants for handing over to the plaintiff the rights to the object of dispute in a free, empty state without accompanying burdens. As for the ruling at point 4, which states that the defendants must stop activities on the disputed land, no force can be taken because the ruling is declaratory.

b. The Plaintiff Must Attach the Base of Rights to the HPL attached to the Disputed Object Land.

One of the essential principles when initiating a lawsuit is the "*point d'interest point d'action*" principle, which stipulates that the plaintiff, whether an individual or a legal entity, must have a legal interest in the disputed object or in asserting a right. The plaintiff must bolster their position as an HPL Holder by presenting the Perum Perhutani HPL Decree as the foundation for the HPL rights associated with the contested land. Explicitly stating this right's basis in the lawsuit petition is imperative to avoid potential legal challenges, such as obscure libel and incomplete lawsuit letters from the Defendant's Legal Counsel, which could lead to the rejection of the lawsuit. Attaching the Perum Perhutani HPL Decree can facilitate the follow-up to the Agreement on Granting Use Rights to a Third Party and offer an alternative to recovering losses suffered by Perum Perhutani.

c. **The Plaintiff Must Compose A Posita and Petitem that are In Harmony with Each Other**

Clarity in formulating the *fundamentum petendi* (posita) with the petitem is one of the formal requirements that must be fulfilled in a lawsuit letter. One type of petitem contrary to procedural rules is a petitem that is not in line with the lawsuit's arguments. The petitem must be by or consistent with the legal basis and facts stated in its posita. If the petitem and posita contradict each other, the petitem is considered vague or obscure. There are 2 (two) theories for formulating the *fundamentum petendi* or lawsuit argument²⁵: 1. Substantierings Theory, which means that the lawsuit argument not only explains the legal event that is the basis of the lawsuit, but also explains the facts that precede the legal event; and 2. Individualization Theory means that the legal events stated in the lawsuit must clearly show their relationship to the law, which is the basis of the claim.

In this instance, considering the theory of individualization, if the plaintiff references losses related to reforestation in their statement, it is essential for them to expressly state in their claim that the compensation being sought is specifically for reforestation. The existence of losses from reforestation serves as the legal basis for the compensation claim, thus necessitating explicit articulation. Consequently, the compensation claim arises from the reforestation losses suffered by Perum Perhutani due to the illegal conversion of state forest land controlled by the defendants. Posita Point 7 and petitem point 7 of the plaintiff's claim in the quo case do not negate each other; however, if the petitem of the compensation claim cannot show a legal relationship with the legal event described in the posita, then the compensation claim will be unclear and could result in the lawsuit becoming formally flawed because clarity in

²⁵ Yahya Harahap, 2019a, Op.Cit, 70.

formulating the posita and petitum is one of the formal requirements for a lawsuit letter.

d. The Plaintiff Should Not Have Mixed the Petitum for Compensation with the Petition for *Dwangsom*

Forced money (*dwangsom*) is an additional punishment attached to the basic punishment when the defendant does not fulfill the basic punishment decided by the judge²⁶. *Dwangsom*, as an alternative form of punishment, aims to psychologically suppress people who violate norms and rules applicable to the law.²⁷ In the provisions of Article 606a Rv *dwangsom*, it cannot be imposed in a judge's verdict, whose main punishment is the payment of a sum of money. Article 606 letter b further states that if the judge's verdict is not fulfilled, the opponent of the convicted person can implement the verdict against several *dwangsom* that have been set without first obtaining a new basis of rights according to the law. Thus, according to Article 606 letters a and b, *dwangsom* has three main properties: 1. Adhering to the main claim, a 2. It is an additional punishment, so it no longer has the force of law when the main punishment in the verdict is implemented; and 3. Is there psychological pressure (*dwang middelen*) on a person who is punished.²⁸

Explanation of Article 225 of the HIR further asserts that *dwangsom* should be imposed on the judge's verdict to punish the losing party for doing or not doing an act. Noting the petitum in the Plaintiff's lawsuit, points 4 and 5 are still relevant to be applied for *dwangsom*

²⁶ Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama* (Jakarta: Kencana Prenada Media Group, 2005): 438.

²⁷ Mansari and Soraya Devi, "Penerapan *Dwangsom* Terhadap Biaya Pemeliharaan Anak Pascaperceraian Di Mahkamah Syar'iyah Sigli," *Media Syari'ah* 21, no. 2 (2019): 148–61.

²⁸ Ade Darmawan Basri, "Implementasi Pelaksanaan *Dwangsom* (Uang Paksa) Dalam Gugatan Perdata," *El-Iqtishady - Jurnal Hukum Ekonomi Syariah* 1, no. 2 (December 2, 2019): 70–79, <https://doi.org/https://doi.org/10.24252/el-iqthisadi.v1i2.11892>.

because it is not an application for the payment of a sum of money. However, the *dwangsom* application petition becomes irrelevant when matched with the lawsuit petition at point 7 so that it becomes nonspecific and unclear, considering that the *dwangsom* should be applied for a claim to perform a legal act other than the payment of a sum of money as contained in petition points 4 and 5 of the plaintiff's lawsuit, which is to stop all activities on the object of dispute and hand over the rights on the object of dispute in a free, empty state without accompanying encumbrances. Bearing in mind that there is still an application for the payment of an amount of damage that is also requested by the plaintiff at point 7, then if the plaintiff wants to submit *dwangsom*, the application cannot be mixed up but must mention the petitum application in question, namely petitum points 4 and 5.

To make it easier for the reader to understand the inaccuracy of the plaintiff in preparing the lawsuit and how to improve the lawsuit to avoid a non-executable verdict, the author has summarized it in a table as follows:

Table 1: Difference Between Inaccuracy of Lawsuit and The Right Lawsuit Based on Case Brebes District Court Verdict Number 06/Pdt. G/2015/PN.Bbs.

No	Inaccuracy of Lawsuit	The Right Lawsuit
1.	Petition Point 4 where the Plaintiff includes the word " <i>State</i> " in the petition which basically orders the Defendants to immediately stop all activities on the disputed object.	Petition point 4 should read " <i>Punish</i> [...]" to stop all activities on the disputed object."
2.	In relation to petition point 2,	Petition point 2 should

the Plaintiff does not attach the basis of the Plaintiff's rights as a party with a legal interest in the form of a Decree Granting Management Rights.

read "Declare [...] based on the Decree of the Ministry of ATR/BPN Number [...] Year [...] concerning the Granting of HPL to Perum Perhutani".

3. Posita and Petitem of the Lawsuit Point 7, where in the posita the Plaintiff must reforest the forest area controlled by the Defendants with a material loss of Rp20. 648,250,000,- (twenty billion six hundred forty-eight million two hundred fifty thousand rupiah), but in the petitum of the lawsuit there is no mention of what material damages of Rp20. 648,250,000 (twenty billion six hundred forty-eight million two hundred fifty thousand rupiahs).

Petitem point 7 should read "Punish the Defendants to pay compensation to reforest the forest area in the amount of Rp. 20. 648,250,000,- (twenty billion six hundred forty-eight million two hundred fifty thousand rupiah)"

4. Petitem point 8 where the Plaintiff requests for *dwangsom* but does not explain what *dwangsom* is, given the limitations in Article 225 HIR.

Petitem point 8 should read "Punish [...] (*dwangsom*) in the amount of Rp500,000, - (five hundred thousand rupiah) per day for the delay to stop all activities [...] and surrender the rights to the disputed object [...]."

V. Conclusion

Forms of the Plaintiff's carelessness in drafting the lawsuit in the quo case include: 1.) The Plaintiff included a request that was not punitive in nature; 2.) The plaintiff did not attach the rights attached to the disputed land object in the form of a Decree on Granting Management Rights issued by the Ministry of ATR/BPN to Perum Perhutani to strengthen its position as an HPL holder; 3.) The plaintiff prepares the posita and petitum asynchronously, causing the lawsuit to contain formal defects and be considered vague; and 4.) The plaintiff mixed up the petition for compensation in the form of payment of a sum of money with a request for dwangsom. Several things the plaintiff must consider when drafting a lawsuit include: 1.) The plaintiff must carefully prepare the nature of the petitum, as any errors in doing so will affect the judge's verdict; 2.) The plaintiff must prepare a comprehensive and specific lawsuit by clearly stating the basis of rights in the lawsuit; 3.) The petitum must be appropriate and consistent with the legal basis and facts stated in the posita; 4.) The plaintiff should not confuse the petition for compensation with the dwangsom petition. The plaintiff should be particularly attentive to the nature of the petitum, the completeness of the basis of rights, and the alignment between the petitum and the posita (factual allegations) to avoid a non-executable verdict. In civil cases, judges are passive and bound by the principle of 'non-ultra petita', meaning they cannot decide on more than what has been requested by the plaintiff. These efforts are critical in reducing delays or non-executable verdicts in civil cases, ultimately contributing to effective civil justice and attaining justice, benefit, and legal certainty.

VI. References

- Abdul Manan. *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama*. Jakarta: Kencana Prenada Media Group, 2005.
- Anand, G, and B.S.A. Subagyo. "Juridicial Execution of Court Verdict Problem in Civil Case in Indonesia." *Studia Humanitatis*, no. 2 (2019): 1–14.
- Arzani, Rezky Apdina. "Tinjauan Yuridis Terhadap Putusan Declaratoir Yang Tidak Dapat Dieksekusi." *AkMen JURNAL ILMIAH* 15, no. 2 (June 30, 2018): 247–56. <https://ejurnal.nobel.ac.id/index.php/akmen/article/view/298>.
- Darmawan Basri, Ade. "Implementasi Pelaksanaan Dwangsom (Uang Paksa) Dalam Gugatan Perdata." *El-Iqtishady - Jurnal Hukum Ekonomi Syariah* 1, no. 2 (December 2, 2019): 70–79. <https://doi.org/https://doi.org/10.24252/el-iqthisadi.v1i2.11892>.
- Fauzan, Muhammad, and Ilyas Yunus. "Studi Kasus Terhadap Putusan Pengadilan Negeri Banda Aceh No. 34/Pdt.G/PN-BNA." *Jurnal Ilmiah Mahasiswa Bidang Hukum Keberdataan* 2, no. 1 (2018): 220–29.
- Garwan, Irma. "Ideal Execution of Civil, Cases Based on Principles of Justice to Create a Simple and Low-Cost Judiciary." *Journal of Humanities and Social Sciences Studies (JHSSS)* 2, no. 6 (2020): 70–77. <https://doi.org/10.32996/jhsss>.
- Gayo, Ahyar Ari. "Problematic in The Civil Decision Execution Process in Indonesia in Order to Realize Court Excellence." *Jurnal Penelitian Hukum De Jure* 22, no. 4 (December 16, 2022): 551. <https://doi.org/10.30641/dejure.2022.v22.551-560>.
- Halawa, Soli Megawati. "Analisis Yuridis Terhadap Pembatalan Dan Pencabutan Sertipikat Hak Pengelolaan Yang Di Dalamnya Terdapat Alas Hak Kepemilikan Atas Tanah Orang Lain (Studi Putusan Nomor 37 PK/TUN/2013)." *Premise Law Journal* 18 (2016): 1–20.

- Hapsari, Happy Indah. "Studi Putusan Yang Tidak Dapat Dieksekusi (Non Eksekutabel) Dalam Perkara Perdataa (Studi Putusan Nomor 16/Pdt.Plw/2014/PN. Kdl)." *Jurnal Verstek* 6, no. 2 (2018): 11–19.
- Hartini, Sri, Setiati Widiastuti, and Iffah Nurhayati. "Eksekusi Putusan Hakim Dalam Sengketa Perdata Di Pengadilan Negeri Sleman." *Jurnal Civics* 14, no. 2 (October 2017): 128–38.
- Mansari, and Soraya Devi. "Penerapan Dwangsom Terhadap Biaya Pemeliharaan Anak Pascaperceraian Di Mahkamah Syar'iyah Sigli." *Media Syari'ah* 21, no. 2 (2019): 148–61.
- Nursolih, Ending. "Analisis Penyusunan Surat Gugatan." *Jurnal Ilmiah Galuh Justisi* 7, no. 1 (March 2019): 87–97.
- Rabat, Dewi, Firdaus, and Danial. "Legal Efforts for A Ruling of Permanent Legal Force That Cannot Be Executed." *Jurnal Hukum Replik* 10, no. 1 (April 9, 2022): 19–41.
- Rayati, Dewi, Firdaus, and Danial. "Legal Efforts for A Ruling of Permanent Legal Force That Cannot Be Executed." *Jurnal Hukum Replik* 10, no. 1 (2020): 19–41.
- Retnowati, Tutiek, and Febri Sintya Sari. "Perlawanan Terhadap Eksekusi Putusan Pengadilan (Studi Kasus Putusan Nomor: 04/Pdt.G/2011/PN.JR. Juncto Nomor: 29/Pdt/2012/PT.SBY)." *The Spirit of Law* 6, no. 1 (May 23, 2019): 68–81.
- Romkeny, Donylisan F, Rusdin Alauddin, and Faissal Malik. "Juridic Review On Civil Decisions Which Was Not Executed Because Of Resistance In The Tobelo State Court (Judiction Analysis Number 11/Pdt.G/2011/Pn.Tbl)." *Legal Brief* 11, no. 4 (2022): 2722–4643. <https://doi.org/10.35335/legal>.
- Rumadan, Ismail. "Enforcement of Court Decision Regarding Payment of a Sum of Money in Civil Disputes to Support the Ease of Doing Business in Indonesia." *KLRI Journal of Law and Legislation* 10, no. 2 (2020): 389–414.

- Taluke, Asdian. “Eksekusi Terhadap Perkara Perdata Yang Telah Mempunyai Kekuatan Hukum Tetap (Ingkraah) Atas Perintah Di Bawah Pimpinan Ketua Pengadilan Negeri.” *Lex Privatum* 1, no. 4 (2013): 24–35.
- Trisnawati, Wati. “Analisis Yuridis Terhadap Putusan Pengadilan Yang Tidak Dapat Dilakukan Eksekusi (Non Executable).” *Jurnal Syntax Admiration* 1, no. 7 (November 2020): 974–90.
- World Justice Project. “The World Justice. Project: Rule of Law Index 2022.” Washington, D.C.: The World Justice Project, 2022.
- Yahya Harahap. *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*. Jakarta: Sinar Grafika, 2019.
- . *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*,. Jakarta: Sinar Grafika, 2019.
- Zakariyah, Robitum Maftukh, and Ahmad Riyadh U.B. “Juridical Overview Regarding the Unenforceability of Court Decisions in Civil Cases That Have Permanent Legal Force (INKRACHT).” *Indonesian Journal of Public Policy Review* 11 (July 31, 2020): 1–7.
<https://doi.org/10.21070/ijppr.v11i0.1162>.

DECLARATION OF CONFLICTING INTERESTS

The authors declare that there are no conflicts of interest in the publication of this article.

FUNDING INFORMATION

This research did not receive funding assistance from any agency.

ACKNOWLEDGMENT

The authors thank anonymous reviewers for their valuable comments and highlights.

Ignorantia excusatur non juris
sed facti