

ENSURING LEGAL CERTAINTY IN THE ENFORCEMENT OF CIVIL JUDGMENTS AGAINST REGIONAL GOVERNMENTS: ASSET SEIZURE AND CONTINGENCY EXPENDITURE

GARANTIR LA SÉCURITÉ JURIDIQUE DANS L'EXÉCUTION DES JUGEMENTS CIVILS À L'ENCONTRE DES GOUVERNEMENTS RÉGIONAUX: SAISIE DES ACTIFS ET DÉPENSES DE CONTINGENCE

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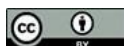
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Abstract

This study examines the problem of legal certainty in the execution of civil judgments against regional governments in Indonesia. Although court judgments that have attained final and binding force (*inkracht van gewijsde*) possess executorial authority, their enforcement is frequently impeded by the statutory prohibition on the seizure of state and regional assets, as stipulated in Article 50 of Law Number 1 of 2004 on State Treasury. The inability to impose executorial seizure often results in delays in the fulfillment of the prevailing party's rights and undermines public confidence in the judicial system. Employing a normative juridical research method, this study analyzes two principal enforcement mechanisms: the possibility of executing seizure over regional government assets and the utilization of contingency expenditure (*Belanja Tidak Terduga/BTT*) within the regional budget. The findings indicate that the seizure of regional

Resumo

*Este estudo examina o problema da segurança jurídica na execução de sentenças civis contra governos regionais na Indonésia. Embora as sentenças judiciais que adquiriram força final e vinculativa (*inkracht van gewijsde*) possuam autoridade executória, a sua execução é frequentemente impedida pela proibição legal de apreensão de bens estatais e regionais, conforme estipulado no artigo 50.º da Lei n.º 1 de 2004 sobre o Tesouro Público. A impossibilidade de impor a apreensão executória muitas vezes resulta em atrasos no cumprimento dos direitos da parte vencedora e mina a confiança do público no sistema judicial. Empregando um método de pesquisa jurídica normativa, este estudo analisa dois mecanismos principais de execução: a possibilidade de executar a apreensão de bens do governo regional e a utilização de despesas contingentes (*Belanja Tidak Terduga/BTT*) dentro do orçamento regional. As conclusões indicam que*



assets is legally permissible on a case-by-case basis, particularly with respect to assets that do not serve essential public functions or originate from unlawful land occupation. In addition, the use of contingency expenditure may be legally justified to satisfy court-imposed monetary obligations classified as urgent needs, especially to prevent greater state losses resulting from the accumulation of interest. This study recommends the establishment of a clearer and more explicit regulatory framework to ensure legal certainty regarding the timeframe and effectiveness of judgment execution by regional governments.

Keywords: Legal Certainty. Civil Judgment Enforcement. Regional Government Liability. Asset Seizure. Contingency Expenditure (BTT).

a apreensão de bens regionais é legalmente admissível numa base casuística, particularmente no que diz respeito a bens que não desempenham funções públicas essenciais ou que provêm da ocupação ilegal de terras. Além disso, a utilização de despesas contingentes pode ser legalmente justificada para satisfazer obrigações monetárias impostas pelo tribunal classificadas como necessidades urgentes, especialmente para evitar maiores perdas para o Estado resultantes da acumulação de juros. Este estudo recomenda o estabelecimento de um quadro regulamentar mais claro e explícito para garantir a segurança jurídica no que diz respeito ao prazo e à eficácia da execução das sentenças pelos governos regionais.

Palavras-chave: Segurança jurídica. Execução de sentenças civis. Responsabilidade do governo regional. Apreensão de bens. Despesas de contingência (BTT).

1 INTRODUCTION

Court judgments (*vonnis*) constitute one of the principal legal products issued by judicial institutions, alongside judicial orders (*beschikking*) (Pakendek, 2019). Within the framework of civil dispute resolution, court judgments occupy a pivotal position, as they serve not only to resolve disputes but also to uphold and enforce civil rights. Juridically, a civil judgment embodies three fundamental legal powers: binding force, evidentiary force, and executorial force (Abdi *et al.*, n.d.). The executorial nature of a judgment is explicitly manifested in the formula “For Justice Based on the Almighty God,” which confers upon the state the authority to enforce the judgment coercively through legally designated institutions (Santosa, 2016). Consequently, a court judgment is not merely declaratory in character, but also imperative and operational.

The enforcement of judicial decisions, commonly referred to as execution, represents the final and decisive stage of civil litigation and serves as a primary indicator of the effectiveness of law enforcement (-kartikey Yadav & Arvind Kumar Singh, n.d.; Tawaqal & Ramada, 2025). A judgment that has obtained final and binding legal force (*inkracht van gewijsde*) cannot be regarded as having conclusively resolved a dispute if it

cannot be implemented in practice. Execution, therefore, constitutes the concrete realization of the legal obligation imposed upon the losing party to fulfill the performance stipulated in the operative part of the judgment (Alemayehu, 2024; Çali & Koch, 2014).

Where voluntary compliance is absent, the state, through the judiciary, is vested with coercive authority to compel compliance. This underscores that the executorial power of judgments lies at the core of legal protection for the prevailing party. From a law enforcement perspective, execution functions as a bridge between abstract legal norms and their tangible application in social reality. The effectiveness of execution is closely linked to public compliance with the law, the authority and dignity of the judiciary, and the consistency of the legal system as a whole (Alvarado Lincopi, 2026a). When court judgments are not executed effectively, public trust in judicial institutions is eroded, and the law loses its normative force as a mechanism of social control. Accordingly, the execution of civil judgments should not be perceived merely as a procedural technicality, but rather as a fundamental component of the rule of law (Robinson & Randhawa, 2026a).

Civil execution proceedings are governed by procedural civil law, which plays a crucial role in ensuring the enforcement of substantive civil law. However, in judicial practice, the enforcement of court judgments frequently encounters both legal and practical obstacles, resulting in delays or failures in the fulfillment of the rights of the winning party (Tremblay, 2005). Non-compliance with judicial decisions or prolonged delays in execution generate legal uncertainty and may cause sustained material and immaterial losses. For this reason, the execution of judgments is intrinsically linked to the principle of legal certainty, which constitutes a cornerstone of a state governed by law (*rechtsstaat*) (Tyler, 2003). Within a constitutional state, the constitution occupies the highest normative position as the fundamental norm that both legitimizes and constrains the exercise of state power, while simultaneously guaranteeing the rights and freedoms of citizens. The concept of the rule of law requires that all governmental actions be based on law and be free from arbitrariness (Khairo & Busroh, 2023). The constitution thus functions not only as a source of authority for public governance, but also as an instrument for the protection of fundamental rights. Nevertheless, in the practical administration of government, public policies and administrative actions may, in certain circumstances, conflict with constitutional norms and result in harm to citizens (Dunlop *et al.*, 2020; Guimarães Andrade & Ribeiro, n.d.). Although the government is not traditionally

classified as a subject of private law, developments in modern legal doctrine recognize that the state may engage in private legal relations.

In carrying out its functions, the government—including regional governments—frequently enters into civil law relationships with private parties, such as procurement contracts, public–private partnerships, and other contractual arrangements. Within such relationships, governmental entities may commit breaches of contract or unlawful acts that cause losses to private parties, thereby giving rise to civil liability.

The doctrine of unlawful acts (*perbuatan melawan hukum*) in Indonesian law is codified in Articles 1365 to 1380 of the Indonesian Civil Code (Cevitra & Djajaputra, 2023; Hakanadila *et al.*, 2025). A fundamental doctrinal transformation occurred following the landmark decision of the Dutch Supreme Court (*Hoge Raad*) of 31 January 1919, which substantially broadened the meaning of unlawfulness beyond mere violations of statutory provisions (Besselink, 2023; Brüggemeier & Brüggemeier, 2020). Under this expanded doctrine, an unlawful act encompasses not only conduct that contravenes written law, but also actions that infringe upon the subjective rights of others, violate legal duties, offend moral values, or deviate from accepted standards of propriety within social relations. Indonesian tort law adopts the concept of *onrechtmatige daad* rather than *onwetmatige daad*, thereby affirming that unlawfulness is not confined to codified norms but also includes unwritten legal principles.

This doctrinal expansion was further consolidated through the *Ostermann-arrest*, in which the *Hoge Raad* abandoned its earlier position denying governmental liability for unlawful acts. Since that jurisprudential shift, governmental entities may be held legally accountable for unlawful conduct in both public and private law contexts. Consequently, regional governments in Indonesia may be positioned as legal subjects subject to civil jurisdiction. When a regional government is declared liable and loses a civil lawsuit, it bears a legal obligation to comply with and execute the final and binding court judgment. Nevertheless, a critical legal problem emerges at the enforcement stage, particularly with respect to the execution of civil judgments against regional governments. This issue warrants careful scholarly examination due to the substantive and procedural distinctions between execution against private parties and execution against governmental entities. The Supreme Court of the Republic of Indonesia, through its Guidelines on Civil Execution, recognizes that although the formal stages of execution against government institutions,

state-owned enterprises, and region-owned enterprises are generally similar to those applicable to private parties, specific legal limitations apply. The most significant limitation concerns the prohibition on the seizure of state and regional assets, as expressly stipulated in Article 50 of Law Number 1 of 2004 on State Treasury (Armen *et al.*, 2023; Pramono, 2023).

As a consequence of this prohibition, civil judgment execution against regional governments cannot be conducted through executorial seizure of assets. Instead, compliance with judicial decisions must be pursued through administrative and budgetary mechanisms, primarily by allocating funds within the Regional Revenue and Expenditure Budget (*Anggaran Pendapatan dan Belanja Daerah*—APBD), either in the current or subsequent fiscal year. In practice, this mechanism frequently results in substantial delays in the fulfillment of final and binding court judgments, thereby undermining legal certainty and diminishing the effectiveness of judicial protection for judgment creditors. This condition stands in clear contrast to the general principles of civil procedural law, which require the losing party to voluntarily comply with a judgment within a maximum period of eight days following a formal warning (*aanmaning*) issued by the head of the district court. The inability to impose executorial seizure on regional government assets effectively deprives court judgments of their coercive force. As a result, prevailing parties are denied effective legal protection, notwithstanding the existence of a final and binding judicial ruling. (Alvarado Lincopi, 2026b; Robinson & Randhawa, 2026b)

Previous studies have identified legal uncertainty in the enforcement of court judgments involving state institutions. However, the existing literature has largely failed to address alternative mechanisms for the fulfillment of monetary judgments in situations where regional government assets are immune from seizure and budgetary constraints are employed as a defense. This gap highlights the necessity of a more focused inquiry into effective legal protection mechanisms for judgment creditors in civil disputes involving regional governments. Against this backdrop, the theory of legal certainty provides a relevant analytical framework for examining the execution of civil judgments against regional governments. Legal certainty constitutes a fundamental objective of law and a core indicator of a fair and effective legal system. It derives not only from statutory norms but also from judicial decisions that have attained final and binding force. Closely linked to the principle of legality, legal certainty functions as a safeguard against arbitrary

governmental action and ensures that individuals may reasonably expect the realization of rights recognized by law. Accordingly, this study aims to analyze the degree of legal certainty in the execution of civil judgments against regional governments, particularly through asset seizure and the utilization of contingency expenditure (*Belanja Tidak Terduga*) funds, and to formulate enforcement mechanisms capable of providing more effective legal protection for judgment creditors.

2 METHODOLOGY

This study employs a normative juridical research method (normative legal research), which conceptualizes law as a normative system rather than as empirical social behavior. The research focuses on the analysis of legal norms, principles, doctrines, and judicial decisions as formulated in statutory regulations and authoritative legal sources. Within this framework, law is understood as a prescriptive structure governing rights, obligations, and institutional authority. Normative legal research is theoretically grounded in pure legal theory, particularly Hans Kelsen's conception of law as a hierarchical system of norms, in which legal validity derives from conformity to higher norms, culminating in the constitution as the fundamental norm (*Grundnorm*). Accordingly, this study positions constitutional principles and statutory provisions as the primary benchmarks for assessing the legality, enforceability, and executorial power of civil court judgments involving regional governments. Consistent with its doctrinal orientation, this research adopts a library-based approach, relying on the systematic examination of legal documents rather than empirical field data. The study aims to evaluate the coherence, consistency, and normative implications of legal rules and judicial practices governing the execution of civil judgments, particularly in cases where public authorities act as judgment debtors. The research is further informed by the doctrinal view that law is authoritatively determined by judges in concrete cases (*law in concreto*). Judicial decisions are therefore treated not merely as applications of legal norms, but also as an essential source of law in addressing normative gaps and legal ambiguities. Where relevant, comparative insights from common law traditions are used to enrich the analysis of judicial authority and the enforceability of court judgments against public entities. This study relies exclusively on secondary legal materials, consisting of: (1) primary legal materials, including constitutional provisions,

statutes and regulations, civil procedural law instruments (HIR/RBg), Supreme Court regulations and execution guidelines, and final and binding court decisions; (2) secondary legal materials, such as scholarly books, peer-reviewed journal articles, dissertations, and expert opinions; and (3) tertiary legal materials, including legal dictionaries and encyclopedias for conceptual clarification. All legal materials are analyzed through qualitative normative analysis, employing statutory interpretation, conceptual analysis, and case-based reasoning. The analysis is oriented toward examining the principle of legal certainty and the effectiveness of executorial mechanisms in civil judgments against regional governments. Through this approach, the study assesses the adequacy of the existing legal framework and formulates normative alternatives aimed at strengthening legal certainty and legal protection for judgment creditors.

3 RESULTS AND DISCUSSIONS

3.1 The possibility of executing seizure over regional government assets

The first legal issue examined in this study concerns whether regional government assets may be subjected to execution seizure (*sita eksekusi*) in civil cases involving local governments. This issue must be analyzed within the framework of statutory regulations governing state and regional assets, judicial precedents, and the principle of legal accountability of the government. Government Regulation No. 28 of 2020 amending Government Regulation No. 27 of 2014 defines State Property (*Barang Milik Negara*) as all assets acquired through the State Budget or other lawful means, while Regional Property (*Barang Milik Daerah*) refers to assets acquired through the Regional Budget or other legitimate sources. Furthermore, Article 6 of Minister of Home Affairs Regulation No. 7 of 2024 clarifies that regional property may originate not only from budgetary expenditures but also from grants, contractual arrangements, statutory mandates, divestments, and—importantly—final and binding court judgments.

The inclusion of assets acquired through court judgments as regional property highlights a critical legal paradox: assets that were originally owned by private parties may be unilaterally claimed and recorded as government assets despite being subject to judicial dispute. In civil litigation involving allegations of unlawful acts committed by the

government—particularly where the government unlawfully occupies or utilizes privately owned land—the decisive analytical approach lies in examining how courts have adjudicated such disputes and enforced their judgments. Judicial practice demonstrates that although government assets are generally protected from seizure due to their public function, such protection is not absolute. The Supreme Court Decision No. 2539 K/Pdt/1985 explicitly affirms that, in principle, state property cannot be subjected to attachment or execution seizure because it is used to perform state functions. However, the Court also emphasized that Article 66 of the *Indische Comptabiliteitswet* (ICW) provides a legal basis for permitting seizure of state assets with prior authorization from the Supreme Court, provided that the assets in question are not inherently or legally exempt from seizure due to their nature or purpose. This jurisprudence indicates that the executability of government assets must be assessed on a case-by-case basis. Courts are required to examine whether the disputed asset qualifies as a public asset that is indispensable for public service delivery or whether it constitutes property that can be legally separated from such functions. Consequently, seizure of regional government assets is legally permissible when the asset originates from unlawful acquisition and does not serve an essential public function that is legally protected from execution.

This reasoning is reinforced by the Banda Aceh District Court Decision No. 33/Pdt.G/2016/PN Bna, in which the court declared that the disputed land belonged to the heirs of the original owner and that the Banda Aceh City Government had committed an unlawful act by claiming the land as state property and constructing public facilities without legal authorization. The court ordered the government to pay monetary compensation amounting to IDR 4.5 billion. From a legal enforcement perspective, if the government fails to comply voluntarily with a final and binding judgment ordering compensation, execution seizure over the disputed asset should be considered a legitimate enforcement mechanism. Such seizure serves not only as a guarantee for the fulfillment of the judgment but also as a manifestation of legal certainty and equality before the law. Judges possess autonomous authority to impose execution seizure within the scope of judicial power, as mandated by Article 5(2) of Law No. 48 of 2009 on Judicial Power, which emphasizes the principles of simplicity, speed, and low cost in judicial proceedings (Crouch, 2011; Maskanah, 2024). In this context, judges are not merely interpreters of

statutory law but also arbiters of substantive justice, balancing positive law with societal demands for fairness and accountability.

3.2 Fulfillment of civil judgment execution through the contingency expenditure budget

The second issue addressed in this study concerns whether the Contingency Expenditure Budget (*Belanja Tidak Terduga/BTT*) may be utilized to fulfill court judgments that have obtained permanent legal force (*inkracht*). This issue arises from persistent practical challenges in enforcing civil judgments against regional governments due to the absence of specifically allocated budgetary provisions. Under Law No. 17 of 2003 on State Finance, state and regional financial obligations include the duty to deliver public services and to settle claims from third parties. Government Regulation No. 12 of 2019 further institutionalizes this obligation by recognizing contingency expenditure as a budgetary instrument intended to address emergency and urgent needs that could not have been anticipated during the budget planning process. Article 69(2) of Government Regulation No. 12 of 2019 defines “urgent needs” to include mandatory expenditures, legally binding obligations, unforeseen expenditures beyond government control, and other expenditures whose postponement would result in greater losses for the regional government or the public.

Within this normative framework, compliance with final court judgments—particularly those imposing financial liabilities—can reasonably be classified as an urgent and binding obligation. In practice, delays in executing court judgments against regional governments often stem from the rigid budgetary planning and approval process, which requires legislative consent and may extend over multiple fiscal periods. This delay undermines legal certainty and contradicts the binding nature of final judgments.

The Constitutional Court Decision No. 25/PUU-VII/2009, although rejecting the petition challenging Article 50 of Law No. 1 of 2004 on State Treasury, provides significant doctrinal guidance. The Court affirmed that, in a rule-of-law state, the government bears liability for unlawful acts and may be required to compensate citizens. The Court also recognized that claims arising from court judgments constitute legitimate state debts that must be settled through financial management mechanisms that ensure

legal certainty and protection of citizens' rights. Nevertheless, the existing regulatory framework does not specify strict deadlines for fulfilling such obligations, nor does it bind regional legislatures to approve budget *allocations* within a defined timeframe. This regulatory gap creates prolonged uncertainty for judgment creditors and exposes regional governments to escalating financial liabilities, including interest penalties.

This risk is exemplified by the case of *PT. Mutiara Aceh Lestari v. Government of the Republic of Indonesia*, in which the court ordered the government to pay outstanding contractual payments exceeding IDR 107 billion, along with accumulated and ongoing interest exceeding IDR 20 billion. The continued accrual of interest illustrates how delayed execution can substantially increase the financial burden on the state. Although Government Regulation No. 12 of 2019, Minister of Home Affairs Regulation No. 77 of 2020, and Aceh Governor Regulation No. 25 of 2022 do not explicitly authorize the use of contingency expenditure to satisfy court judgments, their provisions allow such expenditure for urgent needs where delay would result in greater losses. Therefore, with a comprehensive legal assessment, the use of contingency funds to execute final court judgments is both legally justifiable and economically rational. Utilizing contingency expenditure for this purpose can prevent escalating liabilities, uphold legal certainty, and ensure timely compliance with judicial decisions. Ultimately, this approach aligns with the principles of good governance, accountability, and the rule of law, while providing effective legal protection for parties who have prevailed in litigation against regional governments.

Table 1*Comparative Analysis of Civil Judgment Execution Mechanisms against Regional Governments*

Aspect	Execution Seizure of Regional Government Assets	Execution through Contingency Expenditure (BTT)
Legal Issue	Possibility of seizing regional government assets	Use of contingency funds to satisfy final court judgments
Object	Regional Government Assets	Contingency Expenditure within the Regional Budget
Legal Basis	PP No. 28/2020; MoHA Reg. No. 7/2024; Article 66 ICW	Law No. 17/2003; PP No. 12/2019; MoHA Reg. No. 77/2020
Legal Principle	Limited immunity of state assets	Binding and enforceable nature of court judgments
Key Jurisprudence	Supreme Court Decision No. 2539 K/Pdt/1985	Constitutional Court Decision No. 25/PUU-VII/2009
Main Constraint	Classification of assets as serving public interest	Lengthy regional budgeting procedures
Normative Implication	Asset seizure may be allowed on a case-by-case basis	BTT serves as an alternative execution mechanism

4 CONCLUSION AND RECOMMENDATIONS

Based on normative and jurisprudential analysis, this study demonstrates that the execution of civil judgments against regional governments constitutes a structural challenge in law enforcement, reflecting an inherent tension between the protection of public assets and the fulfillment of citizens' private law rights within a rule-of-law framework. First, the study affirms that the immunity of regional government assets from execution is not absolute. Supreme Court jurisprudence, particularly Decision No. 2539 K/Pdt/1985, provides a normative basis for the selective and case-by-case seizure of regional assets that can be legally and functionally separated from essential public service functions, especially where such assets were acquired through unlawful acts committed by regional authorities. Accordingly, the doctrine of state immunity must be applied proportionately to prevent it from becoming a normative justification for the non-compliance with final and binding court judgments. Second, the utilization of contingency expenditure (Belanja Tidak Terduga/BTT) within the Regional Revenue and Expenditure Budget (APBD) may be regarded as a lawful and rational alternative mechanism for satisfying monetary obligations arising from final court judgments. Such obligations constitute legally binding duties and may be classified as urgent needs, given that delays in execution risk generating greater financial losses for regional governments

due to the accumulation of interest, while simultaneously prolonging legal uncertainty for judgment creditors. Third, this study identifies the absence of a strict regulatory time limit for execution, coupled with the protracted nature of regional budgeting procedures and legislative approval, as the primary obstacles to effective enforcement against regional governments. This condition not only undermines the rights of prevailing parties but also erodes legal certainty and diminishes the authority of the judiciary within the *rechtsstaat*.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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