



## PROBLEMATIC IN THE CIVIL DECISION EXECUTION PROCESS IN INDONESIA IN ORDER TO REALIZE COURT EXCELLENCE

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### ABSTRACT

The duties and responsibilities attached to the position of the Head of the District Court have required him to examine and review every petition for execution submitted to the District Court he leads. This is necessary in order to avoid obstacles to the execution of court decisions that already have permanent legal force. Therefore, this paper aims to describe the causes of obstacles in the execution of court decisions that have permanent legal force. The method used in this research is descriptive-analytical method with the main approach is normative juridical. This study found that the main causes of delays in the execution of court decisions that already have permanent legal force include limited executors, limited budgets, opposition by other people or third parties, and judicial review of court decisions. In order to overcome the obstacles faced in the execution by the Supreme Court of the Republic of Indonesia, it is necessary to prepare State Civil Apparatus that specifically becomes executors by carrying out education in accordance with the main functions that are quite adequate

**Keywords:** problematic; execution; civil decision

### INTRODUCTION

Law Number 48 of 2009 concerning the Supreme Court and Law Number 50 of 2009 concerning General Courts open up the possibility of things that can delay or cancel the execution of a civil case so that legally, there is no guarantee that any petition for execution is submitted by the winning party can be granted instantly.

The Head of the District Court has duties and responsibilities for every execution of civil cases in the legal area he leads. This is because the implementation of every execution of a civil case is juridically under the leadership of the Head of the District Court. The duties and responsibilities inherent in the position of the Head of the District Court have obligated him to examine and review every petition for execution submitted to the District Court he leads.<sup>1</sup>

Whether or not each execution petition is granted, it is a right inherent in the position of

the Head of the District Court as the first-level judicial body in the jurisdiction where the lawsuit is decided. If the Head of the district court feels that the execution petition can be granted, then the Head of the District Court immediately issues a decision addressed to the Registrar/Bailiff to carry out the execution.

The essence of actual execution is the application or implementation of the law that must be enforced. How the law should be enforced will depend on several influencing factors such as the lack of apparatus to carry out the execution

Furthermore, according to the author, juridically, the Head of the District Court can decide on a postponement of the execution if supporting legal facts are found based on the law. However, if viewed from the point of view of the interests of the Execution petitioner, sociologically and economically, this form of statement can cause a loss of time, cost, and energy that has been spent, as well as embarrassment in the community.

The Head of the District Court is required to consider all aspects contained in each petition for execution before the execution decision is

<sup>1</sup> Republik Indonesia, *Lihat Undang-Undang Nomor 50 Tahun 2009 Tentang Peradilan Umum* (Republik Indonesia, 2009).

issued, both regarding juridical aspects and non-juridical aspects. For example, the juridical aspects that can affect the process of examining an execution petition include, among others, the decision that is not condemnatoir or factually that the assets executed do not exist or that the object of execution is in the hands of a third party, while one example of the aspects of non-juridical that can be mentioned is related to humanitarian reasons.

Several research results show the fact that the process of settling civil cases to the status of permanent legal force takes quite a long time. This is because there can also be transfers (mutations) within the judicial body itself so that the Head of the District Court and the Panel of Judges examining the case in question are no longer in the District Court.<sup>2</sup>

In an effort to consider all aspects of the petition for execution, the Head of the district court will require considerable time in addition to his duties and responsibilities as the head of the District Court. This obstacle is often a factor that affects the negative view of the judiciary itself. No less than the figure of a former Supreme Court Judge M. Yahya Harahap in one of his writings also contains several sharp criticism points addressed to the Court, namely:<sup>3</sup>

- a. The Dispute Resolution is slow;
- b. The case costs are expensive;
- c. The judiciary is not responsive (Unresponsive);
- d. The court decision does not solve the problem;
- e. The court ruling is confusing;
- f. The court decisions do not provide legal certainty;
- g. The ability of the judges to be generalist<sup>4</sup>

2 Sypranus Aristeus, "Eksekusi Ideal Perkara Perdata Berdasarkan Asas Keadilan Korelasinya Dalam Upaya Mewujudkan Peradilan Sederhana, Cepat Dan Biaya Ringan," *Penelitian Hukum De Jure* 20, no. 3 (2020): 386, <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/1274/pdf>.

3 M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2005). 121

4 Ibid. 135

The critical material mentioned above is sufficient to provide a brief overview of the current judicial process in Indonesia. This shows that the current situation (*das sein*) in the judiciary is too far from what is actually desired from the Indonesian judicial system (*das solen*), namely a fast, simple, and low-cost judicial system as stated in the provisions of Article 2 Paragraph (4) of the Law Number 48 of 2009 concerning Judicial Authority.

The duties and responsibilities of the position have required a Head of the district court to address any gaps between the facts on the ground and the ideals of the law itself. The execution is constrained by the inability of the implementing officers in the field.

Implementation of execution in the field is always an obstacle where this has collided with a shortage of personnel in the field and inadequate costs. In reality, when using the police, there must be an extra fee for the management. Efforts that can be made by the Head of the District Court are to seek revitalization / reform of executions in the field by preparing execution troops themselves without having to ask the Police. This is because in its implementation the Police are only limited to supporting security.

The authority of the Head of the District Court to carry out the execution is specifically regulated in Article 200 paragraph (11) of the updated Indonesian Regulation (HIR) which states as follows:

"If a person is reluctant to leave his or her property which is being sold, then the chairman of the district court will issue an order to the competent person, to execute the bailiff letter with the help of the registrar of the district court or a European official appointed by the chairman, and if necessary with the help of the police, so that the property may be left and emptied by the person who sold it and his relatives."<sup>5</sup>

This provision is actually an implementation of the reforms that have been carried out by the Supreme Court but have not been fully achieved. The Supreme Court has actually set a number of policies and internal strategies to reform judicial institutions.<sup>6</sup>

5 Aristeus, "Eksekusi Ideal Perkara Perdata Berdasarkan Asas Keadilan Korelasinya Dalam Upaya Mewujudkan Peradilan Sederhana, Cepat Dan Biaya Ringan." H.P Panggabean dalam Sypranus Aristeus

6 Ibid. Sarwata, H, dalam Sypranus Aristeus

It is the Chief Justice who orders the execution of civil cases. Then, the implementation is carried out by the registrar and bailiff. In this case, the Chairman of the Court shall supervise and be responsible from the time the petition for execution is received until the execution of the execution is completed.

The author agrees with the term used by Subekti which states that execution with the term execution of a decision which in the tenth chapter of the fifth chapter of HIR defines execution as executing the decision. Carrying out a court decision means carrying out the contents of a court decision with the help of general powers if the defeated party (executed party or defendant) does not want to carry it out voluntarily.<sup>7</sup>

Civil law is the law that regulates the rights and obligations of the parties in a civil law relationship. Civil Procedure Law is the law that regulates how to carry out the rights and obligations of the parties in a civil law relationship.

In the Civil Procedure Code, it is regulated how the aggrieved party submits his case to the court, how the attacked party defends himself, how the judge acts against the litigants, how the judge examines and decides the case so that it can be resolved fairly, how to implement judge's decision.<sup>8</sup>

Thus, the implementation of the judge's decision is the end of a civil case process. Civil cases can be viewed from various aspects. In civil cases, cases arise because of violations, the rights of a person are regulated in civil law. The initiative in litigation comes from the aggrieved party. The party who submits a case to the court is called the plaintiff while the party being sued is called the defendant.<sup>9</sup>

Taking this into account, this paper will focus on why there are obstacles to the execution of court decisions that already have permanent legal force and what steps must be taken by the Supreme Court in dealing with these obstacles.

## RESEARCH METHOD

### 1. Research Approach

The method used in this research is descriptive-analytical method with the main approach is normative juridical. Analytical descriptive means to describe and describe something that is the object of critical research through qualitative analysis. Because what you want to study is within the scope of legal science, the normative approach includes legal principles, synchronization of laws and regulations, including efforts to find law in concreto (in concrete or special cases).<sup>10</sup>

In normative juridical research, the use of a statute approach is a definite thing. It is said to be certain because logically, normative legal research is based on research conducted on existing legal materials. Even though, for example, the research was conducted because it saw a legal vacuum, the legal vacuum can be identified because there are already legal norms that require further regulation in positive law.<sup>11</sup>

In the context of this research, the approach is taken to the legal norms contained in several laws such as in the Civil Code and HIR/RBg.

### 2. Research Specification

The research specification that will be used is descriptive-analytical, which will provide an explanation of the procedures and implementation of the revitalization of the civil decision execution process in Indonesia in order to realize court excellence. The analysis is carried out in a juridical manner by studying relevant legal principles and theories to find the conception of the completion of the revitalization of the civil decision execution process in Indonesia in order to realize court excellence

### 3. Types and Sources of Data

Because the approach method in this research is a statute approach, the data collection tool is focused on documents or library materials, in the form of legal materials obtained through literature

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7 M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata* (Jakarta: Gramedia, 1998).5

8 Abdul Kadir Muhammad, *Hukum Acara Perdata Indonesia* (Bandung: Citra Aditya Bakti, 2000)., 16

9 Ibid. 24

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10 Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif, Rajawali* (Jakarta: Rajawali, 1983). 15

11 Peter Mahmud Marzuki, *Penelitian Hukum, Cetakan Kedua, Kencana Prenada Media Group, Jakarta, Mei 2006, hlm. 93.* (Jakarta: Kencana Prenada Media Group, 2006). 93

study, including browsing (searching) on several internet sites. The legal materials studied in this study, among others, consist of:

- a. Primary legal materials, namely: legal materials that are authoritative, among others: in the form of various laws that are directly related to the execution of court decisions that have permanent legal force in the field of civil law.
- b. Secondary legal materials, namely: materials that can provide an explanation of primary legal materials, including literature, writings, and seminar papers, as well as opinions from several legal experts that have been published, especially in the field of civil law
- c. Tertiary legal materials, namely: materials that can provide further information regarding primary legal materials and secondary legal materials, in the form of:<sup>12</sup>
  - 1) Kamus Besar Bahasa Indonesia.
  - 2) Black's Law Dictionary Sixth Edition.
  - 3) Dutch - Indonesian Law Dictionary.

## DISCUSSION

### A. Implementation of Civil Decision Execution in Realize Court Excellence in Indonesia

*Court Excellence is a provision that regulates an authoritative judiciary as regulated in the 1990 International Convention which must be applied in Indonesia. In the Green book, the Supreme Court's Action Plan for 2020 to 2035 stipulates that all courts under the Supreme Court must be able to implement court excellence in their operations.*<sup>13</sup>

Humans are destined to always live together for the sake of survival. This requires a law whose provisions can regulate his life, namely civil law. So, civil law is the provisions that regulate and limit human behavior in fulfilling their interests and needs, especially with regard

to individual interests.<sup>14</sup>

In the Kamus Besar Bahasa Indonesia, the judiciary is everything about the complaint case. Meanwhile, the court has many meanings, namely the council, or assembly that hears cases, the trial process, the decision of the judge who hears the case, the decision of the judge who hears the case, the case court, the judiciary is sometimes interpreted the same as the court and sometimes different meanings are expressed. Meanwhile, according to the term, the judiciary is an effort to seek justice and settle legal disputes that are carried out according to certain regulations and institutions in the courts<sup>15</sup>

Execution is the implementation of a Court Decision that has permanent legal force (in kracht van gewijsde) which is carried out forcibly because the defeated party in the case does not want to comply with the implementation of the Court Decision.<sup>16</sup>

In other words, the implementation of the judge's decision or execution is essentially the realization of the obligation of the party concerned (defeated) to fulfill the achievements listed in the decision. However, practice in the field, there is often resistance from the party to be executed against the state apparatus carrying out the execution<sup>17</sup>

In Article 195 HIR / Article 207 RBG it is stated:<sup>18</sup> *"The matter for carrying out the Decision of the District Court in a case which is examined at the first level by the District Court is on the orders and duties of the Chairman of the District Court who at the first level examines the case according to the method stipulated in the HIR articles"*. Furthermore, in Article 196 HIR/Article 208 RBG it is stated: *"If the defeated party is unwilling or negligent to comply with the Court Decision peacefully, the winning party in the case submits an application*

12 Andrea Fockema, *Kamus Istilah Hukum Belanda Indonesia* (Bandung: Bina Cipta, 1977). 277

13 Heri Swantoro, Manajemen Court Excellence pada Peradilan Indonesia, makalah disampaikan dalam Pelatihan Hakim-hakim, Tahun 2020 di Bandung

14 Abdoel Jamal, *Hukum Perdata Islam Di Indonesia*, Cetakan Ke. (Jakarta: Raja Grafindo Persada, 2019,8).

15 Zainal Ahmad Nuh dalam Siska Lis Sulistiani, *Peradilan Islam* (Jakarta: Sinar Grafika, 2021). : 1

16 Admin Universitas Medan Area, "Eksekusi Hukuman Perdata," Magister Ilmu Hukum Pasca Sarjana Universitas Medan Area, last modified 2022, diakses September 5, 2022, <http://mh.uma.ac.id/eksekusi-putusan-perdata/>.

17 Sri Hartini dkk, Eksekusi putusan hakim dalam sengketa perdata di Pengadilan Negeri Sleman, *Jurnal Civics* Volume 14 Nomor 2, Oktober 2017,129

18 HIR (*Het Herziene Indonesische Reglement*) dan RBG (*Rechtsreglement Buitengewesten*)

to the Head of the District Court to carry out the Court Decision". Then, the Head of the District Court summons the defeated party in law and gives a warning (aanmaning) so that the defeated party in the case fulfills the Court Decision within a maximum of 8 (eight) days. Thus, the definition of execution is a forced action carried out by the District Court against the defeated party in a case so that the defeated party in the case carries out the Court Decision as it should.

Execution can be carried out by the Chairman of the District Court if there is a request from the winning party in the case to the Chairman of the District Court. Before carrying out the execution, the Head of the District Court gives a warning (aanmaning) to the defeated party in the case so that within eight days after the Head of the District Court gives a warning (aanmaning), the defeated party in the case must comply with the Court Decision. If eight days have elapsed, it turns out that the defeated party in the case did not implement the Court Decision, then the Head of the District Court may order the Registrar/Bailiff of the District Court to carry out the confiscation of the execution of the land object in question and can then request assistance from state/police tools to assist safeguards in the case of the emptying of the object of the land in question.<sup>19</sup>

So, every decision that has permanent legal force must be executed. Although, in every execution, in general, there is always a reaction to the petition for a delay in execution, especially from the respondent.

The petition for the postponement was based on various reasons. In general, these reasons are irrelevant so pressing will only delay execution. However, sometimes this is based on strong reasons that need to be considered.

Execution delays are casuistic and there is no benchmark for delaying execution. For example, if the review will cancel the decision to be executed, this can be used as a reason to postpone the execution.

The postponement of execution is an exception or is an exception to the general

principles of the law of execution. M. Yahya Harahap said:<sup>20</sup> *"Don't be too wasteful in granting a postponement of execution without a very basic reason. On the other hand, don't be too stingy in granting the petition for a postponement, if execution will result in the rape of truth, law, and justice."*

For example, A and B have litigation over a plot of land and the house on it. A's lawsuit was granted and A was declared the owner and sentenced B to vacate and hand over the litigated land to A. At the time the execution was about to be carried out, C filed an opposition based on the argument that the litigated land belonged to him and submitted a petition for a postponement of the execution. When the case against C was examined, it turned out that C had strong evidence. In fact, A was unable to refute C's opposition. Wouldn't that be sufficient reason to grant a postponement of execution?

Because from the results of the examination of the opposition submitted by C, it can be estimated that the execution will violate truth, law, and justice. It is different if the opposition seems to be just a conspiracy between B and C. It is clear that the execution will not 'rape' anyone. Remember, delaying executions for non-peaceful reasons is a very exceptional (unusual) delay.<sup>21</sup>

If the execution goes smoothly without being postponed, the public's trust and the authority of the Court will increase. You can imagine how disappointed the petitioner for execution would be if the execution was suspended without a good reason because reaching a decision that has definite power, it takes a lot of time and money.

Execution can only be suspended by the Head of the district court, who presided over the execution. In cases of extreme urgency and the Head of the District Court is unable to do so, the Deputy Chairman of the District Court may order that the execution be postponed.<sup>22</sup>

In the context of supervising the proper conduct of the judiciary, the Chief Justice of the High Court as the voorpost (representative) and

19 Bambang Hermawan, "Sumber Hukum Eksekusi Mempunyai Kekuatan Hukum Tetap," *Anzdoc*, last modified 2020, diakses September 5, 2022, <https://adoc.pub/bab-ii-sumber-hukum-eksekusi-mempunyai-kekuatan-hukum-tetap-.html>.

20 Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, 281.

21 Ibid, 290.

22 Mahkamah Agung RI, *Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan*, Buku ke 2. (Jakarta: Mahkamah Agung RI, 2002), 151.

the Supreme Court, may order that the execution be postponed or continued. In cases of extreme urgency and the Chief Justice of the High Court is unable to attend, the Deputy Chief Justice of the High Court may order that the execution be postponed.

The authority to postpone the execution or to continue the execution rests with the highest leadership, namely the Chief Justice of the Supreme Court. In the event that the Chief Justice of the Supreme Court is absent, the same authority rests with the Deputy Chief Justice of the Supreme Court.<sup>23</sup>

Opposition to the execution of confiscation of movable and immovable property is regulated in Article 207 (1) (2) of HIR. The opposition is submitted and decided by the District Court in whose jurisdiction the decision must be implemented (Article 195 paragraph 6 of HIR). Basically, this opposition does not postpone the execution, unless the Chairman gives an order that it be suspended until the District Court makes a decision (Article 207 paragraph (3) of HIR).

Third-party opposition to the confiscation of collateral (conservatoire), confiscation of revindikatoir, and confiscation of execution can only be filed on the basis of property rights so that it can only be submitted by the owner or person who feels that he is the owner of the confiscated goods and is submitted to the Head of the District Court from the Court. The state actually confiscates (Article 195 paragraph (6) of HIR).

If the contestant succeeds in proving that the confiscated goods belong to him, then he will be declared as the correct opponent. Then, the confiscation will be ordered to be revoked. The third party's opposition proposed by the wife or husband, in the case of confiscated joint property, cannot be justified. Third-party opposition is an extraordinary remedy and does not suspend execution.

Execution will be suspended if the opposition is justified. Third party opposition to guarantee confiscation is not regulated in HIR / RBG, but in jurisprudence. The opposition submitted by the Third Party as the owner of the confiscated goods can also be accepted in

the event that the conservatoir confiscation has not been legalized (Supreme Court Decision dated 31-10-1962 No. 306K/SIP/1962).<sup>24</sup>

Opposition as a reason for postponing execution must be submitted before execution is carried out. If the execution has been completed, there is no longer any relevance to delaying the execution. Supreme Court Decision dated August 31, 1977 No. 697K/SIP/1974 stipulates that the formality of filing a challenge against the execution must be submitted before the auction sale is carried out (before the execution is carried out). If the execution has been completed, the third party's attempt to cancel the execution must be through a lawsuit.<sup>25</sup>

In real executions, such as demolition, emptying, and handing over of land and houses, the executed parties often put forward humanitarian reasons as a reason for delaying the execution. For certain cases, according to the author, it is also appropriate to postpone temporarily to give the executors a chance to find a new place.

This does not contradict the provisions of Article 36 paragraph (4) of Law no. 4 of 2004 concerning the power of the judiciary which says "The Court Decision is carried out with due regard to the values of humanity and justice". So, it does not contradict the philosophy of Pancasila.

However, if the stipulated period of temporary delay has elapsed, the execution should also be carried out. Furthermore, what happens if the object that is the object of execution is still the object of dispute in another case that does not yet have definite power? What is the attitude of the Head of the District Court in dealing with cases like this? The author agrees with M. Yahya Harahap's opinion that in this case the application is guided by the "casuistic" principle. This depends on the case and not a priori in delaying execution. If the nature of the dependence on the goods to be executed is such that the case is still in the process of being examined, the execution should be postponed. It is better to postpone the execution process for reasons of the object of the goods to be executed until all cases have a final and binding decision. However, not all cases of objects of execution are still dependent on

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24 Mahkamah Agung RI, *Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan*, Buku ke 2. (Jakarta: Mahkamah Agung RI, 2002), 148

25 RI, *Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan*, 290.

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23 Ibid, 152.

the process of examining other cases, which can be used as reasons for delaying execution. Even though the object of execution is being litigated in another case, the nature of the case does not preclude execution and it is inappropriate to delay execution.

Therefore, the author strongly agrees with what was stated by Liona N. Supriatna that not all opposition from the executed parties has good intention. There was a lot of opposition that the executed parties put forward just as a pretense to delay the execution. This is done with the hope that, if there is a delay, the executed party will get leeway to try to fulfill the decision.<sup>26</sup>

In this case, to speed up the completion of the execution which is postponed due to being involved in another case, the way that the court can seek is to expedite the settlement of the case that is still dependent by asking the court that is examining it to decide as soon as possible on the reasons the case concerned is related to the execution to be carried out.<sup>27</sup>

The legal consequences of an opposition decision to delay the execution in a civil dispute consist of two, namely:<sup>28</sup>

- a. The juridical consequence is that if the opposition's decision to postpone the execution states that the opposition is unacceptable and/or rejected, then the juridical result is that the Head of the District Court issues a Letter of Determination on the Execution of the object in dispute, which will then be executed by the registrar and bailiff,
- b. The consequence for the parties is that the opposing party must submit the object of the dispute to the opponent, when the opposing party does not want to voluntarily release the

object of the dispute, the Court will execute it. If the opposition decision stating that the opposition to delaying the execution is accepted, then the legal consequence is that the execution is postponed for a while, while the consequences for the parties are that the opposing party remains in control of the object of the dispute, while the Opponent is delayed from the fulfillment of the right to the realization of its execution. The decision that reads that opposition is unacceptable, then the opponent can submit another fight to the District Court, when the opposition is felt by the Head of the District Court is only meant to slow down the execution, then the Head of the District Court can immediately order to execute the object of the dispute, even though the opponent submits his fight again.

#### **B. Obstacles in the Execution of Decisions in Civil Cases**

Almost every execution that will be executed is often faced with problems that arise so that it hinders the smooth running of the execution.

The things that cause delays in execution include the following:<sup>29</sup>

- a. Fees that must be paid because the amount of fees has not been met by the petitioner

The amount of the cost depends on what execution action will be carried out, how far the goods are located, whether the goods are scattered or not, and whether or not the transportation is easy. Even if there are no advertising costs for clearing a large land with many inhabitants, it will cost quite a lot. Automatically, if the petitioner has not fulfilled it, then the execution cannot be carried out. It is different if the execution of criminal cases does not require costs as in the execution of civil cases.

- b. There is opposition by other people/third parties and reconsideration

For the defendant of execution, after the warning (Aan-maning) is received, if the warning period that has been determined does not meet the verdict, then the execution will be carried out immediately. It is at this time that opposition is

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26 Liona N. Supriatna & Partner's, "Penundaan Eksekusi Atas Dasar Perlawanan Pihak Ketiga (Derden Verzet)," *lawyersclub.com*, last modified 2020, diakses September 22, 2022, <https://www.lawyersclubs.com/category/penundaan-eksekusi-atas-dasar-perlawanan-pihak-ketiga-derden-verzet/>.

27 RI, *Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan*, 295-297

28 Melani Yustianing .A Dkk, Tinjauan Perlawanan Untuk Menunda Eksekusi Dalam Sengketa Perdata (Studi Kasus Perkara No: 8/Pdt.Plw/2000/Pn Probolinggo), *Jurnal Verstek* Vol. 2 No. 3, 2014, 148

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29 Mahkamah Agung RI, *Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan*, Cetakan Ke. (Jakarta: Mahkamah Agung RI, 2002). 295-297

usually filed, as is the case for third parties who generally only know there has been an execution after it has been announced in the newspapers or at the time of implementation in the field, then the third party will submit a *verzet* after there is an opposition.

Article 195 (6) of HIR determines that opposition to the execution of the decision by the executed or other person who recognizes the confiscated goods as his property is submitted to and decided by the district court in whose jurisdiction the decision must be implemented. So it is clear that the law itself regulates the opposition submitted by the defendant and other people.

However, Article 207(3) of HIR states that in principle the opposition does not postpone the execution unless the Chairman gives an order that it be suspended until the District Court makes a decision.

In practice, it is often the executor who submits an opposition, because the execution process continues and then sends a letter to the Chief Justice of the Supreme Court, either asking for legal protection or reporting the KPN in question. Likewise, in the event that the execution is suspended due to the opposition, the petitioner for the execution complains to the Chief Justice of the Supreme Court because the execution is suspended. For example, the Letter of Request for Legal Protection submitted by Esterina Visibaharianie, Legal Advisor JI. Pesapen Kali 26 Surabaya as mentioned above.

Likewise the Judicial Review. Often the execution respondent submits a petition for Judicial Review that the execution is postponed until the Judicial Review decision is issued and because the execution by the KPN continues, the execution respondent complains or asks for legal protection from the Chief Justice of the Supreme Court.

On the other hand, if the execution is postponed due to Judicial Review, then the Execution Petitioner will complain to the Chief Justice of the Supreme Court. For example, the letter and Paulus Wijaya, A. Kedungdoro No. 84F Surabaya concerning Request for Legal Protection and suspension of auction execution by the Banjarmasin District Court, dated March 29, 2004, which in essence requests that the auction execution be postponed until the case is

decided at the stage of review and or until the claim and opposition of the petitioner has permanent legal force.

c. Obstacles due to content/editorial decisions

Sometimes the editorial in the decision letter is not clear which can lead to various interpretations. This can happen, for example, because the Plaintiff/proxy is not careful in preparing the editorial petition of the lawsuit, while the judge simply grants what is requested in the *petitum* of the lawsuit.

d. At the time the execution was carried out, the petitioner was unable to appoint assets

The second interpretation regarding the meaning of the absence of executed assets includes the inability of the petitioner for execution to indicate where and what goods are to be executed. In this case, it is not certain whether or not the property has been executed. However, the execution petitioner was unable or failed to show where and what property was executed. This is in accordance with the legal obligations imposed on the petitioner for execution, which must be able to show the assets of the executed which will be the object of execution. As long as the petitioner does not succeed in appointing the executed goods, either physically or based on the identity and location of the goods, the execution cannot be carried out, so the Head of the District Court has the authority to declare a petition for a non-executable execution

e. Item Shown Not Found

The petitioner for execution designates an item to be the object of execution. However, when the execution was carried out, the bailiff did not clearly find the designated items. In such a case, the execution cannot be carried out, for the reason that the item to be executed is “not present” or the item to be executed is “not found”

The implementation of court decisions in civil cases is carried out by the registrar and the bailiff led by the head of the court as stated in Article 54 paragraph (2) of Law no. 48 of 2009 concerning Judicial Authority. Execution is carried out on decisions that have permanent legal force, the following decisions are considered to have a permanent legal force that can be executed after the decision, among others<sup>30</sup>:

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30 Universitas Medan Area, “Eksekusi Hukuman Perdata,” *Magister Ilmu Hukum Pasca Sarjana Universitas Medan Area*, last modified 2022, diakses

1. The decision of the District Court that has been accepted by both parties to the case
2. Reconciliation Decision (*acta van dading*)
3. Verstek decision (without the presence of the defendant) against which no *verzet* or appeal has been made
4. The decision of the High Court was accepted by both parties without a cassation attempt
5. The decision of the Supreme Court in the case of cassation

Decisions that have permanent legal force must be *comdenatuir* decisions or decisions that have a punishing order. Not all decisions that have permanent legal force can be executed, several decisions that have the permanent legal force that cannot be executed, namely:

1. Declaratoir decision, that is the judge's statement as outlined in the decision handed down. The statement is an explanation or determination of the rights and status in which the decision is included in the decision.
2. A constitutive decision, that is a decision that ensures a legal condition, whether it negates or creates a new legal situation.
3. The goods to be executed are not in accordance with what is stated in the decision.
4. The object of the execution is unclear, does not exist, has been destroyed, has become the property of the state, the object is located abroad.
5. A decision declared non-executable by the Head of the District Court based on the minutes made by the bailiff who was ordered to execute the decision

According to Haswandi<sup>31</sup>, the difficulty of courts in executing decisions on civil case objects that have legal force continues to be a problem. Therefore, it is proposed to form a special unit at the Supreme Court (MA) so that the execution of objects of civil cases with legal force can still be carried out

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September 5, 2022, <http://mh.uma.ac.id/eksekusi-putusan-perdata/>.

31 Rofiq Hidayat, "Calon Hakim Agung Ini Bicara Kendala Eksekusi Perkara Perdata," *hukumonline.com*, last modified 2021, diakses September 5, 2022, <https://www.hukumonline.com/berita/a/calon-hakim-agung-ini-bicara-kendala-eksekusi-perkara-perdata-lt614878bcc3d3d>.

Taking into account the description above that in order to carry out the execution of court decisions that have permanent legal force, several execution problems are often faced, including:

1. Respondent for execution refused because it is not in accordance with the order.
2. Petitioner for execution refused because it was not in line with expectations.
3. Both parties refused to be executed for various reasons.
4. The verdict is not clear.
5. The object to be executed is different from *amar*.
6. The decision includes parties who are not sued.
7. *Eksekutorial Verkoop* covers all debtor's assets.
8. Confiscation of executions and follow-up auctions.
9. Execution is linked to late appeals and cassation.
10. Execution of defendants who have not filed appeals or cassation.
11. Repeat the wrong execution.
12. Reconfiscation after execution is complete.

## CONCLUSION

The emergence of obstacles to the execution of court decisions that already have permanent legal force is hampered by the implementation of the execution because the goods to be executed are not in accordance with those stated in the decision, the object of the execution is unclear, does not exist, has been destroyed, has become the property of the state, the object is overseas and there is still a lack of human resources for the State Civil Apparatus that handles executions and the limited infrastructure support.

Facing obstacles in carrying out executions of court decisions that have permanent legal force, in the future the Supreme Court of the Republic of Indonesia must be able to prepare State Civil Apparatus to carry out separate executions of court decisions that have permanent legal force. The State Civil Apparatus prepared by the Supreme Court must be equipped with adequate education in accordance with the main tasks and functions.

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