



The Issue of Execution Process in Civil Procedure Law in Indonesia

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Abstract

That a judicial process is a way to resolve issues that arise in society. A good judicial process will promote the creation of justice in society. However, the fact is that not all judicial processes can be carried out to create justice in society, such as when a court decision cannot be enforced or executed, then the judicial process is considered incapable of creating a sense of justice for the community. This study will discuss the issues of execution process in civil procedural law in Indonesia. The research method used is normative juridical. The research concludes that successful execution terminates the series of civil case resolutions. However, obstacles that occur are technical obstacles such as direction of the crowd at the execution site, and substantive obstacles in the decision, namely the decision does not clearly detail the object and procedure of execution.

Keywords: *Issues; Execution; Civil*

Introduction

Civil Procedure Law regulates how to file claims for rights, examine them, decide on them, and execute their rulings (Mertokusumo, 2006:37). The settlement of civil cases consists of three stages: preliminary stage, determination stage, and execution stage. The preliminary stage starts from the preparation of drafting the lawsuit until the submission of the lawsuit to the court. The determination stage begins with the trial examination, which includes the process of pleading, the process of evidence presentation, and concludes with the verdict. After the verdict is issued, legal efforts continue until the verdict has legal force (*inkracht van gewijsde*). The execution stage is the implementation or enforcement of the final and binding court decision. (Budi, 2017: 101).

The completion of the examination of a case until a judge's decision is rendered is not the end of the civil case process; rather, the most important aspect is whether the decision can be executed, meaning whether the rights of the winning party contained in the decision can be effectively enforced. The judge's decision must be capable of being executed or enforced. A court decision is meaningless if it is not enforced; therefore, a judge's decision has the power of executory, which means the power to enforce what is stipulated in the decision coercively with the assistance of state instruments. The phrase "In the Name of Justice Based on the Almighty God" in the court decision gives it executory power (Wulan, 2013: 76).

In reality, it is not uncommon to encounter court judgments that are not voluntarily implemented or realized by the losing party. If the losing party refuses to implement voluntarily, then enforcement can be done forcibly through execution (Harahap, 2007:62). Forced execution is carried out by the court. The purpose of execution is to ensure that the judgment is enforced and the interests of the winning party are fulfilled by the losing party.

There are several cases that have obtained final legal force (*inkracht van gewijsde*) but they cannot be executed. In practice, not all execution requests submitted to the District Court can be carried out. This is due to constraints in executing them. These constraints are divided into two categories: general constraints and specific constraints. Based on the description above, this research will specifically discuss the urgency and relevance of execution in resolving civil cases through judicial institutions. This study will also discuss the execution of land and house eviction in the resolution of civil cases through judicial institutions. It will also address the constraints faced in executing civil cases.

Method

This research utilizes a normative juridical method, which is a legal research method that examines legal issues based on the regulations governing the (Suteki & Taufani, 2020:62). The research data used are secondary legal data obtained through literature review (Muhaimin, 2020:78). The analytical approach used is descriptive-analytical, which involves describing the legal issues being analyzed in order to subsequently find answers to those issues.

Research Findings and Discussion

1. The Urgency of Civil Court Execution Process

According to R. Subekti, (R Subekti, 2001:104) Namely, execution or implementation of the judgment implies that the losing party refuses to comply with the judgment voluntarily, so the judgment must be enforced upon them with the assistance of public force (Djais, 2000:52). According to Retnowulan Sutantio and Iskandar Oeripkartawinata, execution is the coercive action by the court against the losing party who refuses to voluntarily comply with the judgment (Riduan, 2015:49). Essentially, execution is a coercive measure mediated by authorities against the losing party who refuses to voluntarily comply with the judgment, with the aim of ensuring that the winning party obtains what is rightfully theirs according to the judgment. Therefore, the purpose of execution is to ensure that the winning party/creditor obtains what is rightfully theirs according to the contents of the judgment/contract if the losing party/debtor does not fulfill their obligations voluntarily.

Principles of execution include the following the judgment is not voluntarily complied with, and the judgment capable of being executed is *condemnatoir* Principles of execution include: the judgment is not voluntarily complied with, the judgment has obtained final legal force, and the execution is carried out under the order and leadership of the Chief Judge.

The judgment capable of being executed is a judgment with executory legal force if the judgment is headed "In the Name of Justice Based on the Almighty God". However, not all judicial decisions require execution; only condemnatory judgments (judgments whose verdict or decree contains elements of "punishment") are executable, while constitutive and declaratory judgments do not require coercive measures for their implementation "*non-executable*" (Harahap, 1988:11). Furthermore, based on Article 224 of the Indonesian Civil Code (HIR), there are also two types of executory instruments, namely the grosse of debt acknowledgment and the grosse of mortgage seizure. Grosse is the original copy and authentic deed, where this original copy is given to the creditor.

Execution can only be carried out when the District Court's judgment (judge) in a civil case has obtained final legal force, except in judgments that can be executed immediately or in provisional judgments (Hartini, & Widiastuti, 2017:132). In other words, the execution of a court decision can only be carried out when the parties are satisfied with the judge's decision, as they do not file an appeal or cassation, or when there are no legal remedies left to challenge the decision because a cassation decision has been issued.

Execution begins with the submission of an execution request by the execution petitioner, either verbally or in writing. The execution request is a prerequisite for the execution to proceed; without it, execution cannot be carried out. After the execution request is submitted, the losing party is summoned by the Chief Judge of the District Court to appear for a warning or reprimand (*aanmaning*) to execute the contents of the judgment within a minimum period of 8 days based on Article 196 of the Indonesian Civil Code (HIR). If the warning deadline set is exceeded and the defendant still refuses to comply with the judgment, then from that moment onwards, with the issuance of an execution order (ruling), the judgment can be forcibly executed by the court clerk and bailiff under the leadership of the Chief Judge of the District Court (Bianti, 2023: 32).

Execution as a legal action carried out by the court against the losing party in a civil case is a rule and procedure that follows the examination process of the case (Wikanto., Yudowibowo., & Harjono 2014:7). This execution is crucial to ensure that the court's judgment is enforced and the interests of the winning party are fulfilled by the losing party.

2. The Implementation of Execution for Vacating Land and Residential Buildings in the Resolution of Civil Cases Through Judicial Institutions

Before the execution is carried out, the Chief Judge of the District Court will instruct the Court Bailiff to summon the Execution Petitioner to appear before the Chief Judge for a warning (*aanmaning*) to execute the contents of the judgment as intended in the court's decision. If the Respondent fails to execute the contents of the judgment beyond the warning deadline set (8 days), then from that moment onwards, the judgment can be executed, followed by the issuance of an "Execution Order Letter" determined by the Chief Judge of the District Court, containing an order to carry out the execution.

The types of execution of a judge's decision can be classified into 3 (three) forms, namely (Mertokusumo, 2006:64):

a) Execution Carries Out an Act (Article 225 HIR)

If someone is ordered by the court to perform an action but fails to do so within the specified time, the winning party in the court's decision can request to the Chief Judge of the District Court, either orally or in writing, that their rightful interests be promptly fulfilled by the losing party in the court's decision.

b) Real Execution (Article 1033 RV)

Real execution refers to carrying out a "real action" such as delivering certain goods, vacating a piece of land or a house, performing a specific act, stopping a certain action or condition, and so on. This real execution can be directly executed with actual actions, in accordance with the judgment without the need for an auction.

c) Execution by Paying a Sum of Money (Article 196 HIR)

Execution by paying a sum of money is only carried out through auction first, this is because the value to be executed is in the form of money.

Eviction execution (Budi, 2017: 48) Eviction execution for land and residential buildings is a type of Real Execution, where in its implementation, the execution order is issued by the Chief Judge, court clerk, or if unable, delegated to the bailiff, with the stipulation that the name of the officer and their position tasked with executing the execution must be clearly stated, as regulated in Article 197 paragraph (1) of the Indonesian Civil Code (HIR) or Article 208 paragraph (1) of the Indonesian Civil Procedure Law (RBG). In the execution process, the court clerk or bailiff is assisted by two honest, trustworthy witnesses aged 21 years or older, who function to assist the court clerk and bailiff in carrying out the execution, as stipulated in Article 197 paragraph (6) of the Indonesian Civil Code (HIR) or Article 208 paragraph (6) of the Indonesian Civil Procedure Law (RBG) (Suyatno, 2014:81).

Before the execution is carried out, the bailiff and others go to the local sub-district office to convey their purpose of visit to the local sub-district head, showing the execution order to execute, which states that the Defendant is sentenced to vacate the land and buildings in a vacant and good condition (Tanuwidjaya, 2016: 54). After the land and buildings have been executed, the Bailiff or Court Clerk, witnessed by two witnesses, will hand over the land and buildings to the Plaintiff through their legal representative in vacant and good condition. Once handed over to the Plaintiff, the Plaintiff has the right to use and utilize the land and buildings. Upon completion of the execution, an Execution Report will be prepared, signed by the executing officer (Court Clerk or bailiff) and witnesses. The court will then send the Execution Report file of the civil case to the parties involved. Successful execution marks the end of the civil case resolution process through the court. The Execution Report must include the following details (Harahap, 2007:42):

- a) Types of items subject to execution;
- b) The location, size, and area of the fixed assets to be executed;
- c) The presence or absence of the party being executed;
- d) Confirmation and description of item monitoring;
- e) Explanation of non-compliance for those not in accordance with the court's decision;
- f) Explanation of whether the execution can be carried out or not;
- g) Time, day, date, month, and year of the execution implementation;
- h) The execution report is signed by the executing officer, two witnesses, the head of the local village or sub-district, and the executed party.

3. The Challenges of Implementing the Execution Process in Civil Cases in Indonesia

Execution of a final and binding court decision (*inkracht van gewijsde*) (Roihan, 2000: 92) Often considered as the final step in resolving a dispute in court, where the winning party hopes that through the execution, they will obtain their rights as determined by the court's decision. In practice, executing a court decision is not as straightforward as imagined. There are several cases that have obtained final legal force (*inkracht van gewijsde*), However, they face obstacles in the execution process (Wiyono, 2014: 72). Common obstacles encountered in the execution process include (Manan, 2013: 63):

- a) The presence of a crowd at the execution site makes it difficult for the officers to maintain the situation.
- b) The execution object is not clearly found in the field because the boundaries of the disputed object differ from those stated in the court's decision.
- c) Although the verdict is *condemnatoir*, there is uncertainty regarding the detailed quantity or size of

the execution object, making it difficult to execute. For example, the execution of payment of a sum of money is unclear in terms of when it starts and ends, as well as the exact amount, in the verdict.

Specific constraints in the execution of civil cases include (Harahap, 2007:53):

- a) The absence of the losing party during the warning stage (*aanmaning*) or even during the execution itself. This is because the presence of the losing party can facilitate the execution process. The absence of the losing party, both during the warning stage and during the execution, can pose challenges.
- b) The granting of a request for a stay of execution due to humanitarian reasons. In this case, the losing party requests a stay of execution due to humanitarian reasons.
- c) Communication barriers with the executed party in determining the amount of severance pay. This is because the executed party is unreachable and cannot be contacted at all, leading to difficulties in providing severance pay as agreed upon.

Another obstacle that may occur in the execution practice is related to the high cost of execution, as well as intervention from officials within the judiciary or executive branch who are unwilling to comply with the execution, especially if they themselves are subject to the execution of a court decision.

Conclusion

The principles of executing a civil case decision include, the decision is not executed voluntarily, the decision that can be executed is *condemnatory* in nature, the decision has obtained final legal force, and the execution is carried out under the order and leadership of the Chief Judge. To execute, an execution request must first be submitted by the execution petitioner, either verbally or in writing. After the submission of the execution request, the respondent is then summoned by the Chief Judge of the District Court for a warning (*aanmaning*) To enforce the decision within at least 8 days. If the Respondent does not comply with the decision beyond the specified warning period (8 days), then from that moment onwards, the decision can be executed followed by the issuance of an "Execution Order Determination Letter" established by the Chief Judge of the District Court containing instructions to execute. Eviction execution of land and residential buildings is a type of Real Execution. Successful execution marks the end of the civil case resolution process through the courts. It is hoped that every civil decision can be executed to provide justice and legal certainty over the rights of the winning party, always the execution petitioner. The Chief Judge, as the most responsible party in implementing civil case decisions, is expected to ensure the execution of decisions runs smoothly. As for the execution respondent, it is hoped that if there is a final and binding court decision, they can voluntarily comply with the decision, thus avoiding the need for forced execution of civil cases through the judicial system.

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