

Just Execution with Permanent Legal Force

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Abstract. The execution of a civil case decision that has permanent legal force often experiences obstacles in its implementation, and is even difficult to implement. This is contrary to the principles of a simple, fast, and cost-efficient justice system, especially in the execution process. The applicant for execution, who hopes that his rights can be fulfilled by the respondent, is often burdened by high execution costs, even though the execution is carried out not due to the applicant's fault, but due to the respondent's unwillingness to voluntarily implement the decision. In this case, the aim is to analyze the regulation of the execution of civil case decisions that do not reflect justice, identify weaknesses in the implementation of the execution of civil cases that have permanent legal force, and provide a concept of justice-based execution reconstruction. The approach used in this study is normative juridical with a post-positivism paradigm, as well as through the approach of laws, concepts, comparisons, and cases. It can show that the current execution regulation does not provide a sense of justice, with the existence of legal uncertainty and problems in the execution procedure. Weaknesses in the legal substance in the HIR/RBg, as well as structural weaknesses and legal culture, are the main factors in the ineffectiveness of the execution of civil case decisions. Legal reconstruction includes changes to related articles in the HIR and the General Courts Law, as well as the establishment of a special institution that handles confiscation and execution. So that a fairer execution concept can be created and provide legal certainty for execution applicants.

Keywords: Execution; permanent legal force

INTRODUCTION

Execution is the implementation of a court decision that has obtained permanent legal force, carried out by force if the losing party does not carry out the decision voluntarily. This process involves the assistance of court officials, including clerks and bailiffs, and can use general force such as the police or military if necessary. Execution aims to ensure the implementation of decisions that contain elements of punishment and must be carried out by paying attention to humanitarian values and justice. In addition, the theory of legal development views law as a means to renew society by creating new values that are in accordance with the development of the times. Conflict theory offers various dispute resolution strategies, such as competing, giving in, problem solving, or through traditional approaches, ADR, or the courts. Law, as a tool to achieve social goals, has an important role in creating a more just and prosperous society, by accommodating public, social, and personal interests.

Execution is the implementation of a court decision that has permanent legal force (in *krach van gwijsde*) which is carried out by force by the losing party in a case who does not want to comply with the implementation of the court decision. As with the "word execution" which has been known especially in legal circles, it turns out that the word comes from English which in the original text is written *executie* which means to carry out, do, carry out, carry out, kill according to the judge's decision. Carrying out the death penalty in short execution means carrying out or relating to the implementation of the executive institution, for example which means an institution that has the authority to implement the Law.

It often happens that the defeated party does not want to implement the legal decision voluntarily so that assistance from the court is needed to enforce the decision by force. The party that wins the

decision can request a decision (execution) from the court that will enforce it by force (executive force). Sudikno Mertokusumo does not explicitly provide a formulation or definition of execution, but from this description it can be understood that execution is nothing other than the forced implementation of a judge's decision with the assistance of court officials. It is said to be forced because the implementation of the decision is not on the initiative of the losing party itself, but rather contrary to the will of the losing party.

Meanwhile, according to M. Yahya Harahap, carrying out a court decision is nothing other than implementing the contents of the court decision, namely by forcefully implementing the court decision with the help of general force if the losing party (executed or the defendant does not want to carry it out voluntarily (virijwilling voluntary).

Execution according to the legal definition can be identified as follows:

In principle, execution is nothing other than the implementation of a judge's decision, but not every implementation of a judge's decision is called an execution. Only the implementation of a decision by force with the assistance of a court can be called an execution. This means that a decision that is carried out voluntarily by the losing party cannot be called an execution because the implementation of such a decision does not require coercive efforts. Therefore, the implementation of a judge's decision has a broader meaning than the meaning of execution.

Such coercive efforts do not mean that they are carried out by the winning party or other people alone but rather through the assistance of security forces. This must also be done in accordance with the rules that have been set. This needs to be emphasized to avoid misunderstandings so that the implementation of the will by the winning party to carry out the judge's decision is also called execution so that its actions are considered legal. Such actions should be avoided as much as possible to prevent the emergence of vigilante actions (erigenriching). Because this has the potential to harm a party and may even turn into an unlawful act (onrech matige daad).

Execution as a legal action carried out by the court against the losing party in a case is a rule and procedure for continuing the case examination process. Therefore, execution is nothing more than a continuous action from the entire civil procedural law process. The word "execution" or implementation already contains the meaning that the losing party does not want to obey the decision voluntarily, so that the decision must be forced upon him with the help of general power.

By this general power is meant the police, if necessary the military (armed forces). According to Darwan Prinst, execution is the official implementation of a court decision under the leadership of the head of the district court. Execution is not the same as vigilante action, such as the withdrawal of goods sold by hire purchase by the creditor to the debtor, which are then withdrawn in various ways such as threats of violence, intimidation or confiscation of the goods from the debtor.

Basically, the understanding of execution is based on the provisions of Chapter 10, Part 5 of the HIR or Part 4 of the RBg, which comes from the phrase "tenuitvoerlegging van vonnissen." In relation to the implementation of a court decision carried out by the court at the request of a party, of course it is done "by force" considering that the executed party is not willing to carry it out voluntarily (execution forces). The matter of execution or implementation of a court decision is regulated in the provisions of Part V of the HIR and Part IV of the RBg, namely Articles 195 to 224 of the HIR or Articles 206 to 258 of the RBg, with the title of implementing the decision. From these provisions, an understanding of the principles of execution is obtained which include the following matters:

Executing a decision that has permanent legal force (inkracht van gewijsde). In essence, this principle is intended as an execution to carry out a court decision that has obtained permanent legal force, by implementing coercive measures against the losing party (if deemed necessary, general legal force can be used, considering that the losing party is not willing to carry it out voluntarily. Regarding this principle, the Law also provides limitations on exceptions which include:

Implementation of the decision in advance (Uitvoerbaar bij voorraad)

Implementation of provisional decisions

Peace deed

Execution of the deed of deed

The decision was not carried out voluntarily.

Basically, the execution carried out by the court is the last option after it turns out that the losing party (defendant) is not willing to voluntarily fulfill the court's decision. If the opposite happens, the defendant voluntarily fulfills the contents of the court's decision, the execution carried out by the court is automatically no longer necessary.

Executable decisions are condemnatory. Executable court decisions are limited to decisions that are condemnatory (condemnatoir), meaning that the verdict contains an element of "punishment".

Execution on the orders and under the leadership of the head of the district court. The provisions of Article 195 paragraph (1) HIR and Article 206 paragraph (1) RBg regulate that execution is on the orders and under the leadership of the head of the district court who previously examined and decided the case at the first level examination, without reducing his rights and authority to delegate the execution to another district court if it turns out that the object to be executed is located outside the jurisdiction of the relevant district court (Article 195 paragraph (2) HIR, Article 206 paragraph (2) RBg).

METHOD

The research method used in this study is normative legal research, which is a research that focuses on legislation. In this study, the author will conduct research by examining legal materials that are library or other secondary data. The approach method used by the author is using a statute approach and a conceptual approach. The statute approach is carried out by reviewing and analyzing all laws and regulations related to the legal issues that are the object of research. This research itself is descriptive analysis, namely research that produces descriptive analysis data with the method used to describe a research object based on legal theory or applicable legislation.

DISCUSSION

Execution Issues

Problems of Legal Substance

The substance of the regulatory issues regarding the implementation of civil case decisions are as follows:

Article 195 paragraph (1) HR states that the implementation of the execution is led by the Head of the District Court. In addition to having duties and authority in serving justice seekers, the Head of the District Court is given the authority to lead and order the implementation of the execution. Given the great responsibility of the Head of the District Court, it results in the responsibility in implementing the decision becoming unfocused. It is necessary to discuss the existence of a Special Institution/Institution that handles and supervises the implementation of court decisions that have permanent legal force.

HIR does not regulate the execution deposit. The absence of this legal basis means that in practice all execution costs are borne by the applicant as the party considered to have an interest in carrying out the execution. The imposition of execution costs on the applicant is certainly very detrimental to the applicant because in addition to the execution being carried out not due to the applicant's fault, but due to the respondent's unwillingness to voluntarily carry out the decision, this system makes the applicant spend a lot of money, and there is no guarantee that the execution process will be completed quickly.

Civil procedural law only regulates that a party who does not want to implement a decision voluntarily will be given a warning or admonition in an incidental hearing. However, there are no further rules on how to give a warning or admonition in the hearing.

Article 197 HIR does not regulate the party that must conduct the tracing of assets related to the execution seizure. This creates ambiguity as to whether the tracing of the assets is the obligation of the

court as the party carrying out the execution seizure, or the applicant as the party interested in the execution seizure, or the respondent as the party that should execute the decision.

Article 199 paragraph (1) HIR has stipulated that the respondent is prohibited from transferring goods subject to execution seizure since the execution seizure report was issued. However, this prohibition should not only apply to the respondent because there is the potential for goods subject to execution seizure to be controlled by another party.

Based on the requirements for appointing a bailiff as stipulated in Article 40 of Law Number 2 of 1986 in conjunction with Law Number 49 of 2009, there is an imbalance between the duties carried out by the bailiff. Therefore, it is necessary to improve the requirements for the competence of the bailiff with the authority of the bailiff in order to facilitate the implementation of the execution.

The Civil Procedure Law, PERMA No. 3 of 2012, and SEMA No. 4 of 2008 do not yet regulate the inclusion of certain real needs in the execution costs.

Although the Execution Guidelines at the District Court open up the possibility of more than one annmaning hearing, these guidelines do not regulate the distance between the first annmaning hearing and the next.

In the Guidelines for the Implementation of Duties and Administration of Justice, it is only regulated that if the object of execution does not match the goods mentioned in the verdict, then the verdict cannot be executed. However, this condition is certainly unfair to the applicant and should not be used as a reason for not carrying out the execution.

Although electronic summons has been recognized and regulated in PERMA No. 3 of 2018, this PERMA can only be applied to cases that use advocates.

In addition to the annmaning trial, the parties can also agree to a settlement outside the court. However, in practice, the parties who reach a settlement outside the court after the annmaning do not report the settlement to the court. This causes uncertainty as to whether the execution will still be carried out after the annmaning period ends.

Regarding the authorized party to conduct the Auction, Indonesian Civil Procedure Law only recognizes the Auction office and the court as the Auction executor in the execution of civil cases. In fact, there are special places that are commonly used for the sale and purchase of certain goods, such as the stock exchange for the sale and purchase of shares and the futures exchange for the sale and purchase of future commodities.

There is no standard for security costs by the police. Security cost standards vary between executions. The absence of this cost standard also raises the potential for the police to unilaterally determine execution costs and make execution costs expensive. Therefore, there needs to be a firm and clear regulation regarding the standard for security costs by the police in the execution process. This cost standard must regulate the components of security costs, such as the cost of consumption for each police personnel involved, along with the amount of each component.

The Gatheringregulated in PERMA No. 1 of 2010 results in the execution taking longer and being more expensive. The cost of implementing gijzeling certainly adds to the burden of execution costs that must be incurred, especially since the burden must be borne by the applicant. Even if the costs are paid in advance by the applicant and will be replaced from the sale of the defendant's assets, logically this is impossible considering that gijzeling itself is carried out because there are no more defendant's goods that can be sold to pay money to the applicant so that it is impossible for there to be any more goods that can be sold to cover the gijzeling costs.

The Civil Procedure Law does not regulate the mechanism that can be taken if the goods resulting from the execution seizure are not successfully sold in an Auction. Regulation of the Minister of Finance Number 27 of 2016 does not regulate the limit on how many times a re-Auction can be held.

Problems of Legal Structure

Lack of Support from DPR and Government

The DPR and the Government have not yet focused and are not serious about reforming civil procedural law, including regulations on the execution of decisions in civil cases, which have not provided justice and legal certainty for justice seekers so far. Therefore, the DPR and the Government need to immediately continue and complete the discussion of the National Civil Procedure Law Bill which has been around for a long time and has always been prioritized in every PROLEGNAS.

Chief Justice of the District Court

The executors are the Head of the District Court, the Clerk, and the Bailiff. The Head of the District Court, ex-officio, is the party authorized to lead and order the execution of civil disputes. The task of leading this execution certainly adds to the burden of responsibility of the Head of the District Court, who has been given the authority to lead this responsibility, potentially making the Head of the District Court not focus on work, especially in leading the execution of civil cases.

The system of promotion and transfer of judges also often results in the execution process being carried out during the period of the replacement of the chief justice's leadership. This can lead to two different practices in the field. Then another factor that often hinders the execution of decisions in civil cases is the intervention of the authorities. The intervention of the authorities can come from executive officials or officials within the judiciary itself.

Bailiff

Bailiffs are the spearhead of the implementation of court decisions in civil cases. However, in the field, because the execution decision only contains very limited information about the object of execution, bailiffs often have to "improvise" in dealing with various obstacles that exist.

In addition, referring to the duties of a bailiff as given in Law Number 2 of 1986 in conjunction with Law Number 49 of 2009 and linked to the requirements to become a bailiff, there appears to be an imbalance between the authority and burden of a bailiff and the requirements and competence of a bailiff.

State Apparatus / Tools

The law enforcement officers referred to in the execution are the police who secure the execution. The problem is that the large operational costs for securing the execution of the verdict can generally be burdensome for the execution applicant. As a result, the execution applicant objects, so that some postpone the execution for a while and some even do not dare to submit an execution application at all.

The provisions of Article 197 paragraph (1) HIR/Article 208 RBg, determine that the authority of the head of the district court to order and lead the execution is an ex official authority. The authority of the head of the district court to order the execution in the form of a "determination" and order addressed to the clerk or bailiff, to carry out the execution, executorial actions of beslag, implementation of auctions, actions to empty, and the actual delivery and implementation of goods executed in real execution. In Law on Judicial Power Number 4 of 2004, Article 36 regulates the implementation of court decisions (execution, specifically for court decisions in civil cases, is found in:

Article 36 paragraph (3) states that the implementation of court decisions in civil cases is carried out by the clerk and bailiffs led by the chairman of the court.

Article 36 paragraph (4) court decisions are implemented by taking into account the values of humanity and justice.

Furthermore, in the explanation of Article 36 paragraph (3) it is stated that what is meant by "led" in this provision includes supervision and responsibility from the time the application is received until the completion of the implementation of the decision.

CONCLUSION

The execution of a civil case decision that has permanent legal force can have theoretical implications for the DPR and the Government in the renewal of civil procedural law, especially regarding the execution of civil decisions in accordance with the principles of legal certainty, fast, simple, and low-

cost justice. In addition, it also has implications for the Government and the Supreme Court in making regulations related to the execution of civil decisions. Practically, this has implications for the Head of the District Court and the Bailiff in the implementation of the execution of civil case decisions that have permanent legal force.

Meanwhile, suggestions that can be recommended for regulations on the execution of civil case decisions based on justice are:

Execution is the final stage of civil case resolution which is important to ensure justice and legal certainty. Delays in execution cause injustice and reduce the benefits of court decisions. Therefore, there needs to be an update to civil procedural law that is fairer and in accordance with current developments.

Reconstruction of execution regulations needs to be carried out, including changes to several articles related to the leader of the execution and the requirements of the bailiff. The formation of a special division in the court to handle the execution is also needed. In addition, guarantees of certainty of execution, including penalties or fines for those who obstruct, must be applied to expedite the process and provide a deterrent effect.

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