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JURIDICAL EXECUTION OF COURT VERDICT PROBLEM IN CIVIL CASE IN INDONESIA

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Execution is the act of forced execution applicant or winning party through a Court of jurisdiction competent against the executed parties to comply with or enforce a decision which had permanent legal force. In its implementation, the juridical execution must comply the defined principles in article 195 until 208 HIR (Herziene Inlandsch Reglement). The principle included the verdict of permanent legal force, condemnatory verdict, non-voluntarily verdict and execution by Head of Court. However, there are some constraints that occurred. Those are inappropriate action done by the parties and infringement in breaking the law either civil or criminal sanction.

Keyword: execution, Court of decision, execution principle, Indonesia.

ПРОБЛЕМА ИСПОЛНЕНИЯ СУДЕБНОГО ПРИГОВОРА ПО ГРАЖДАНСКИМ ДЕЛАМ В ИНДОНЕЗИИ

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Исполнение наказания является принудительным актом, исполняемым заявителем или выигравшей стороной через суд или компетентный орган, который приводит в исполнение решение, имеющее постоянную юридическую силу. При его осуществлении юридическое исполнение должно соответствовать статьям 195-208 Уголовного кодекса (Herziene Inlandsch Reglement). Этот принцип включает в себя приговор, имеющий постоянную юридическую силу, обвинительный приговор, несвоевременный приговор и исполнение приговора главой суда. Тем не менее, есть некоторые ограничения. К ним относятся ненадлежащие действия, совершенные сторонами, и нарушение гражданского или уголовного законодательства.

Ключевые слова: исполнение наказания, решение суда, принцип исполнения, Индонезия.

Introduction

A process of civil lawsuit was ended up with judges' final decision. Basically, the execution should be carried out voluntarily by a defeated party in accordance with the judges' decision. In fact, the defeated party did not voluntarily run the verdict well, even though it has permanent legality or known as *inkracht van gewijsde*. Hence, the judicial execution institution is needed.

Execution is a forced act of the execution applicant, as a winning party, through the Court with authority to obey the permanent legality which has fixed power. The execution institution intended to avoid a vigilante action in winning the party or known as *eigenrichting*. By implementing the execution, the Court will warn the applicant in making the decision or called as *aanmaning*. However, if the involved party keep rejecting in making decision, the Court will bring out the determination as the basis of execution. Hence, the implementation must be done by force or using the help of state security [4].

In its implementation, juridical execution often had obstacles caused by some factors, including the non-executable verdict, the obscure execution objects, the existence of third party opposition or *derden verzet* and the rejection through physical opposition by the executed party. For example, the execution case happened in Surabaya. A dozen of houses in Genting, Surabaya were crashed down by the Court executor. The execution process was having a blockage from the society since they did not want to have their house destroyed. Even, there was a clash between the executor and society. The execution process was done after the society defeated in Surabaya Public Court [3].

The case explained above was not the only, case but there were still many other cases happened in Indonesia. These cases happened due to some factors, such as administrative land factor, law personal factor, or other factors. Therefore, there must be a study discussing about the right and appropriate solutions based on the valid law.

Based on the background explained previously, the problems offered in this study are formulated as (1) what execution principles need to be applied in civil case,

and (2) what obstacles obstruct the execution principles implementation in civil cases.

Results and discussion

A. Checking process of civil case in the Court

Civil rights violation causes lost to other parties that could demand their rights through Court. The checking process of civil case in the Court as follows [7]:

Lawsuits -> Mediation -> pleading (process) -> Verification -> Verdict -> Legal effort -> Execution.

1. The checking case process is started from lawsuit letter to the Public Court.

Before submitting the lawsuit, the officers need to know about the lawsuit form and elements so that it does not content the statements which against each other, usually that called as "Obscure Libel" that may cause rejection.

2. Mediation process is a process that obligates the judges' panel to reconcile both parties through the mediator. It is in line with Supreme Court regulation No. 1/2008.

3. The pleading process is done by the whole parties.

4. The next step is verification.

5. Then, the next step is verdict by the judge of Public Court.

6. After that, legal efforts are include: *verzet,* comparison (submitted to the High Court), *derden verzet,* cassation and judicial review (submitted to Supreme Court).

7. The last step is execution.

Based on the explanation above, the cases checking should follow long process. Yet, it does not influence people to solve the problem in the Court. It is proven by the existence of incoming cases in Surabaya Public Court and Sidoarjo Public Court. Below tables display the incoming cases in Surabaya and Sidoarjo.

1. The incoming case in Surabaya Public Court

a. 756 civil cases in 2006:

Types	Remains of 2005	Incoming case 2006	Verdict	Withdrawal	Remains of 2006
Lawsuit	952	756	828	68	812
Appeal	416	1044	988	13	459
Total	1368	1800	1816	81	1271

b. 755 civil cases in 2007:

Types	Remains of 2006	Incoming case 2007	Verdict	Withdrawal	Remains of 2007
Lawsuit	812	755	619	103	495
Appeal	459	1200	1227	5	145
Total	1271	1955	1846	108	640

c. 766 civil cases in 2008:

Types	Remains of 2007	Incoming case 2008	Verdict	Remains of 2008
Gugatan	495	766	876	385
Permohonan	145	991	1063	73
Jumlah	640	1757	1939	458

Based on the data above, Surabaya Public Court has worked maximal to solve all cases, in either lawsuit or appeal. It can be seen from the total cases executed from 2006 until 2009 have reached 60% from the total of incoming case.

2. The incoming cases in Sidoarjo Public Court

YEAR	LAWSUIT	APPEAL
2004	132	-
2005	147	-
2006	155	147
2007	159	218
2008	168	280

Based on the data above, Sidoarjo residents still commit to solve the civil case in Sidoarjo Public Court, in either the lawsuit or the appeal.

B. Execution principles

In order to fulfill the justice of each party, the main Court’s duty is checking civil cases as stated in applied legislations. It is also as simple, quick and cheap as

stated on Clause 4 verses (2) Legislations No.4/2004 about judge authority. Surabaya and Sidoarjo Public Court have done the simply and quickly checking as relevant to the previous statement. It can be shown at the number of cases in below table, as followed:

I. Surabaya Public Court

No	Year	Incoming case	Executed	*Inkracht*	Execution
1	2004	779	708	39	55
2	2005	760	625	61	40
3	2006	756	778	169	39
4	2007	755	721	294	34
5	2008	766	876	227	41
6	2009	648	280	407	34

II. Sidoarjo Public Court

From 2004 until 2008, the *inkracht* cases total in Public Court of Sidoarjo is:

a. 761 cases lawsuit.

b. 645 cases lawsuit.

The verdict that has permanent legal force (*inkracht van gewijsde*) is expected by everyone, especially the winning party because it will return the litigant's civil right.

Execution is the final step in civil case handling. The regulation applied is stated in chapter 10 at the fifth of HIR (HIR stands for *Herziene Inlandsch Reglement*, which is an updated Indonesian Regulation, namely the procedural law in civil and criminal trial cases that apply in Java and Madura) or article 195 until 208, article 224 HIR or article 206 until 240 and article 285 RBG (RBG stands for *Rechtsreglement Buitengewesten*, which is namely the procedural law in civil and criminal trial cases that apply to the rest of Indonesia) [6, p. 122]. Those articles explain about the regulation of execution procedures which include warning procedures (*aanmaning*) and execution seizure (*executoriale beslag*).

Furthermore, Based on the article 195 until 208 HIR or article 206 until 240 RBG, there are principles need to be considered, as followed:

1. The verdict with permanent legal force (inkracht van gewijsde) can be executed

Basically, if one the party still effort to conduct legal comparison or cassation, it means that the verdict does not have permanent legal, as mentioned in the article 1917 B.W. Then, based on the jurisprudence of Supreme Court No. 1043 K/Sip/1971, the verdict that has a permanent legal force can be requested for execution. It is because:

a. Only the verdict with permanents legal force contained fixed and permanent legal relation between the litigant.

b. Because there is a legal relation between the litigants, so the legal relation must be obeyed and fulfilled by the defendant.

c. The way to obey and to fulfill the legal relation set in the verdict with permanent legal force can be conducted voluntarily by the defendants.

Thus, it can be said that the principle of execution is a force action conducted with the general strength to run the verdict which has obtained permanent legal force. The execution cannot be conducted if the verdict has not got legal strength. Meanwhile, the activity of execution itself means if the second party is not willing to obey the verdict and should be forced through military help.

However, there are some of exceptions set out in legislation that permit the execution can be run toward the decision without permanents legal force, including:

a. The execution of the verdict that can be run firstly [6, p. 113]

This execution is one of the exceptions of the principle above. According to article 180 (1) HIR or article 191 (1) RBG, the execution can be run by the Court toward the Court decision although the relevant verdict has not obtained a permanent legal force.

b. Execution of the provision verdict

This execution is the execution exception to the verdict that has permanent legal force.

Based on the article 180 (1) HIR or 191 (1) RBG, called the provision lawsuit, which is the temporary lawsuit precede the main verdict of case. If the judge approves the lawsuit, the verdict can be executed even if the main case has not been executed.

c. Execution of the reconcilement verdict

Based on the article 130 HIR or article 154 RBG, the reconcilement deed made by judge can be mentioned like the verdict that has been obtained permanent legal force [6, p. 132]. Therefore, the constitution itself has placed the reconcilement deed made as the verdict that has obtained the permanent legal force so that the reconcilement deed has the executorial.

d. Execution of the *Grosse Acta*

Other exceptions regulated in the constitution is the execution of *Grosse Acta*, in either mortgage or debt as regulated in article 224 HIR or article 258 RBG which allow the execution toward an agreement, as long as it is a *Grosse Acta*, because the article of *Grosse Acta* contains the verdict that has permanent legal force so that it is automatically attaching the executorial force [5, p. 213].

e. Execution of mortgage right and fiduciary assurance

Another exception is the execution of mortgage right based on the constitution No. 4/1996 about mortgage right and fiduciary assurance. From both of assurance institute, the creditor may requests the execution of mortgage object and fiduciary assurance if the debtor is willing to in pay the debt. It is possible for the creditor to execute the auction through the auction office without Court intervention even.

2. The condemnatory verdict which can be executed

Basically, only condemnatory judgments can be executed; the dictum verdict containing a punishment. There are some characteristics to determine a condemnatory judgments within the dictum verdict, those are:

a. Punishing or instructing to give goods.

b. Punishing or instructing to give a field or a house.

c. Punishing or instructing to do an action.

d. Punishing or instructing to terminate an action.

e. Punishing or instructing to pay money.

3. The non-voluntarily verdict

Globally, Execution is as a force action to run the decision. If the defendants obey the verdict voluntarily, so there will not be execution. On other words, the

execution of new case will be held if the defendant does not obey the verdict voluntarily.

4. The execution held by the Head of Court

Commonly, the execution is held by the Head of Court, which decide the case in the first level. Thus, if there is a verdict in the first level and executed by the Court, so the execution is under at the relevant Head of Court as determined in the article 195 (1) HIR or 206 (1) RBG.

Regarding those principles of execution, some of them should be given attention, are:

1. The case should have a permanent legal force (*inkracht van gewijsde*)

Based on the execution principle above, the total of cases handled by the Surabaya Public Court is as followed:

a. In 2000, the number of *inkracht* case are 6 cases.

b. In 2001, the number of *inkracht* case are 6 cases.

c. In 2002, the number of *inkracht* case are 9 cases.

d. In 2003, the number of *inkracht* case are 14 cases.

e. In 2004, the number of *inkracht* case are 39 cases.

f. In 2005, the number of *inkracht* case are 61 cases.

g. In 2006, the number of *inkracht* case are 169 cases.

h. In 2007, the number of *inkracht* case are 294 cases.

i. In 2008, the number of *inkracht* case are 227 cases.

j. In 2009 (until September 30, 2009), the number of *inkracht* cases are 407 cases.

Meanwhile, in Sidoarjo Public Court, the number of *inkracht* case on the lawsuit are 761 cases and on the petition are 645 cases in 2004 until 2008.

2. In accordance with the verdict

The implementation of execution should be in line with the verdict of judge, especially the condemnatory verdict or giving the punishment to defendant.

3. The object must be clear

The implementation of execution should show the object clearly either in types of object, pattern or in places of those objects.

4. Fulfilling the sense of justice

Basically, the execution is re-enforcement of civil from the litigant that won in the verdict with permanent legal force, but in the implementation, it does not cause a loss to the third party.

5. Appropriate to the regulations

The execution should be appropriate to its determination mentioned in article 195 until 208 and article 224 HIR or article 206 until 240 and article 258 RBG.

Regarding the implementation of execution which should be appropriate with execution principle, it will give an effect toward some of execution request by the applicant. This case is seen from the data information in Surabaya Public Court, as followed:

a. In 2000, the execution requests are 57 cases.

b. In 2001, the execution requests are 56 cases.

c. In 2002, the execution requests are 62 cases.

d. In 2003, the execution requests are 60 cases.

e. In 2004, the execution requests are 55 cases.

f. In 2005, the execution requests are 40 cases.

g. In 2006, the execution requests are 39 cases.

h. In 2007, the execution requests are 34 cases.

i. In 2008, the execution requests are 41 cases.

j. In 2009, the execution requests are 34 cases.

C. The constraints in the execution

The Judges confirmed the decision of *inkracht* cases would give big hope to manifest its violated rights by respondent. However, those decisions or judgment will not always be done voluntarily by the litigant. Moreover, there are enforcement efforts of Court that produces nothing. It is because the execution object is moved to third party. Therefore, it is called as non-executable execution.

The non-executable execution can be described as in below points:

1. None execution wealth

If there is no execution wealth to respondent party, then the execution cannot be undertaken (no executable). Also, there is no voluntarily effort by respondent party through moving hand objects to the third party. Then, it needs the *Conservatoir Beslag* statement of claim after object case, either movable or immovable wealth owned by respondent aimed to implement the judgment based on Clause 227 HIR.

Even though execution wealth does not exist, the creditor rights to demand the repayment is not banned. Furthermore, even though the Public Court issued the un-existed wealth owned by respondent, it also does not ban the debtor's repayment obligation. Therefore, the execution right still can be opened if the litigant know and show the respondent wealth execution [1, p. 346].

2. Execution object moved to the third party

Execution is being non-executable if the object moved to third party, whereas its party is not being sued. Yet, it is merely commandment by respondent as though there had been trade agreement between respondent and third party before the execution implementation day.

Therefore, the litigant needs to propose a *Conservatoir Blag* (guarantee) of the position application after immovable or movable wealth owned by respondent to ensure the judgment implementation as stated on Clause 227 HIR. Whereas, the movable object owned by litigant mastered by respondent in the form of *revindicatoir beslag* as stated in 226 HIR.

Besides, the mere trade agreement between the respondent and third party can be threatened as stated on Clause 231 Indonesian Penal Code by 4 years least jailed. Therefore, if it is also involved a notary, so it can be threatened by 7 years least jailed as stated on Clause 266 Indonesian Pena Code.

3. Execution object rented on third party

Basically, the renter execution is not included with third party who owned the object. It is as stated on Clause 1576 B.W that "trade did not break the rental" (*koop breekt geen huur, lease goes before sell*). In other words, the ownership of the litigant

has been moved based on the Judge's decision and does not break the existing rental [1, p. 336].

However, the object was rented by third party was merely unrighteous notary act or the expired date rental agreement. Therefore, the unrighteous rental agreement could be threatened by Clause 263 Indonesia Penal Code with 6 years least jailed while the unrighteous notary act could be threatened by Clause 266 Indonesia Penal Code with 7 years least jailed.

4. Execution object guaranteed to third party

Commonly, if the execution object had been guaranteed to third party based on loan agreement without assurance, then the execution could only be applied on the debtor's object that freed from burdened.

In fact, the assurance is owned by the third party that actually right-hand man. The right-man hand is by the respondent that has agreements each other. Even, the agreement of assurance existence was made by notary assistance. On the other words, the agreement letter is being counterfeited.

Based on the previous explanation, the respondent and the third party could be threatened with 4 years least jailed according to Clause 231 Indonesia Panel Code. Therefore, if that violation involved a notary, they could be threatened with 7 years least jailed according to Clause 266 Indonesia Penal Code.

5. Execution object changed to state property

If the execution object, in the form of land, becomes state property, then it is included to non-executable execution. Such the case is usually found in Land Building Rights (HGB) or Right of Cultivation. The changing status is caused by period limitation, particularly around 20 years and may be prolonged. Such the case happened when HGB was still owned by its respondent while in the same time, the execution would be conducted is expired and the request for prolonging is not published yet, thus the property becomes the State property.

6. Execution object is aboard

Generally, the aboard object is considered as non-executable. It is based on Clause 341 RV which stated that the Indonesia Court Judgment is only applied in Indonesia. It does not have execution power aboard [2, p. 356].

Regarding to implementation obstacles, the Surabaya Public Court face several of them, including:

1. The third party involvement such as gangsters to block the execution

This happened when Surabaya Public Court would execute Hotel Garden on 12 November 2009 after twice cancellation. It also had chaos between the gangsters and polices. Fortunately, the police could handle them and the execution ran smoothly without any resistance.

The existence of such obstacle above exemplified collide the rule Clause 212 of Criminal Code in Indonesia, in which the punishment will be about four months arrested.

2. Execution object moved that complicate the execution

Such this obstacle ever happened on execution of No. xyy/Pd.tG/1999/PN.Sby case on Jl. Embong Malang Surabaya. It was happened while the object was guaranteed to a bank. The execution object guaranteed was done after the cassation judgment from Supreme Court that won the respondent although there was a judicial review of the judgment that made the litigant won the case.

The execution obstacles were because of the object had been guaranteed or moved to the third party. Therefore, it will be threatened by Clause 231 verse (1) Indonesia Penal Code with 4 years arrested.

Additionally, if guarantying the object involve notary, then it will be threatened Clause 266 Indonesia Penal Code with 7 years arrested.

3. The safety and securities disturbance on execution

This obstacle happened at the West Freeway of Simo Gunung. Hundreds of resident block the road around with Molotov bombs against the Surabaya Public Court execution officer. Residents considered that the officers miss-understood the

address. It was also caused that the houses had already had the valid land certification by National Land Agency.

The execution had trouble because of residents' blockade by Molotov bomb which was included on Clause 212 Indonesia Penal Code to such violation.

4. Non-executable command

a. The ancient building execution on Jl. Tunjungan Surabaya held on 19th of November 2009 had harsh trouble. The resident opposition persevered with Surabaya Public Court officers because they still having cassation. Finally, the litigant succeed that the execution officers only executed building No. 74 & 76 while No. 78 building succeed to be defended.

b. The 40.800 m^2 land dispute execution in Tambak Mayor Surabaya. The residents came to the Court to cancel the execution before the final decision made by the judges. The society's act came out because the case was still on cassation level in Supreme Court.

Regarding to the non-executable judgment, particularly the *inkrach* on cassation level, Head of Court must be more careful to take a judgment.

Conclusion

Based on the explanation above, this study can be summarized that the implementation of execution should be appropriate with execution principles so that, it can get the justice for all the party. The execution principle that is: the verdict with permanent legal force; condemnatory verdict; verdict not run voluntarily; execution is implemented by Head of Court.

In the implementation of execution, there are some constraints in the execution, among others; there is an action that not good they do, their action is breaking the law either in civil sanction or criminal sanction.

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