

## The Conclusive Phase of Civil Case Resolution: Examining Execution and Post-Decision Challenges in Indonesian Civil Procedural Law

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## The Conclusive Phase of Civil Case Resolution: Examining Execution and Post-Decision Challenges in Indonesian Civil Procedural Law

Retno Kus Setyowati

**ABSTRACT.** The culmination of a civil case in court is marked by the crucial step of decision implementation, commonly known as execution. Execution can only proceed when the decision attains permanent legal force (*'inkracht van gewijsde'*). While the losing party may voluntarily execute the decision, failure to fulfill stipulated obligations empowers the winning party, the plaintiff, to seek forced execution. Despite the irrevocable legal status of a decision, as signified by its permanent legal force, Indonesian civil procedural law affords opportunities for litigants and third parties to reassess such decisions. This reassessment is facilitated through challenges or rebuttals, as outlined in Article 195 paragraph (6) HIR, Article 206 paragraph (6) Rbg, Article 378 RV, Article 279 RV, and is guided by the *Ius Curia Novit* principle, as affirmed in Article 10 of Law Number 48 of 2009 concerning Power Justice. Utilizing a normative juridical approach, this study relies on secondary data to explore the nuances of execution and post-decision challenges, drawing on primary legal materials, secondary legal materials, and tertiary legal materials.

**KEYWORDS.** Execution, Civil Decision, Effective and Efficient

# The Conclusive Phase of Civil Case Resolution: Examining Execution and Post-Decision Challenges in Indonesian Civil Procedural Law

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## Introduction

The final stage of a case is a decision. In a civil dispute, the plaintiff who wins because his lawsuit is granted will want the contents of the decision to be implemented. If a civil case decision grants the plaintiff's claim, the defendant who loses should carry out the decision voluntarily, but if this is not done, it can be implemented by force through a request for execution. In practice, there are many difficulties in its implementation, both in small cases and large cases because of various obstacles that hinder it. In small cases and within the scope of family law, for example a divorce decision which determines that the husband must provide support for his child until they reach adulthood, but the husband does not carry it out. How to force your ex-husband to comply by providing the maintenance that has been decided.

In civil decisions that are condemnatorial in nature, they can be in the form of paying a sum of money, or to carry out a certain act or an order to vacate land/buildings, all of which face difficulties in implementation. The execution of civil decisions is said to be the final and most important point in the entire series of civil dispute resolution processes. The successful

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execution of court decisions effectively and efficiently is an inseparable part of the success of a case resolution system process starting from case registration, trial, decision to the decision execution process. Even though there is non-compliance with the contents of the decision by the losing party, civil procedural law has provided procedures for the execution or implementation of the decision.

As in the Meulaboh District Court's decision which sentenced PT Kalista Alam to pay material compensation and environmental restoration could not be implemented.<sup>2</sup> In this decision, PT. Kalista Alam because he was proven guilty of burning +\_1000 hectares of Rawa Tripa peatland and was obliged to pay 366 billion rupiah to the state treasury and also had to restore the peatland. Many real executions cannot be carried out due to various background problems, the most recent being the execution of emptying a house belonging to a celebrity, namely Guruh Sukarna Putra's house on Jalan Fatmawati, South Jakarta, based on the decision of the South Jakarta District Court Number 67/Pdt.G/2014/ PN.Jkt.Sel dated January 21 2015, where up to now the execution of vacating the house has not been carried out.

In principle, execution as an act of being forced to carry out a court decision that has permanent legal force is only a legal option, if the losing party does not want to carry out or comply with the contents of the decision voluntarily, then the act of execution must be removed, therefore a distinction must be made between carrying out the decision voluntarily and carry out decisions by execution.<sup>3</sup> If the losing party is willing to carry out the decision voluntarily, then the civil case is considered finished without receiving assistance from the court in implementing the decision. In principle, execution as an act of being forced to carry out a court decision that has permanent legal force is only a legal option if the losing party does not want to carry out or comply with the contents of the decision voluntarily.

This example of a decision raises a problem, why the defendant or losing party is reluctant to carry out the court decision voluntarily and how the execution can be carried out effectively and efficiently.

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<sup>2</sup> Court Decision, Nomor 12/Pdt.G/2012.2012/PN.MBO South Jakarta District Court Nomor 67/Pdt.G/2014, 8 January 2014

<sup>3</sup> M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata* (Jakarta: Sinar Grafika, 2005), p. 11

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## Method

The method used in this research is normative juridical, the data used is secondary data, legal materials in the form of primary legal materials contained in statutory regulations, namely the 1945 Constitution, the Civil Procedure Law (HIR, RBg, RV), Law -Judicial Power Law, Supreme Court Regulations, while secondary legal materials are court decisions, scientific books written by experts related to the issues discussed and tertiary legal materials in the form of legal dictionaries.

## Analysis and Discussion

A court decision has no meaning for the winning plaintiff if it cannot be implemented or is non-executable. Only a judge's decision which is condemnatoir in nature, that is, a decision whose injunction or dictum contains an element of "condemnation" can be implemented, while a judge's decision which is constitutive and declaratory in nature does not require coercive means to implement it or is "non-executable".<sup>4</sup> This is because the two decisions do not contain a right to an achievement, so the legal consequences do not depend on the assistance or willingness of the defeated party, so that no coercive means are needed to implement the decision. In civil procedural law, there are 3 (three) types of execution, namely execution regulated in Article 196 HIR, Article 225 HIR, and real execution.

Article 196 HIR is an execution regarding the payment of a sum of money, namely "If a person is reluctant to voluntarily comply with the contents of a decision that requires him to pay a certain amount of money, then if before the decision is passed he has confiscated collateral, then the collateral confiscation is declared valid and valuable and automatically becomes an executorial confiscation".<sup>5</sup> The execution is carried out by auctioning off the goods belonging to the defeated person, so that the amount that must be paid according to the judge's decision is sufficient and the costs incurred as a result of implementing the decision are added. There are 2 (two) types of executorial confiscation procedures for selling confiscated goods, namely executorial confiscation as a continuation of collateral confiscation, and executorial confiscation carried out in connection with an execution

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<sup>4</sup> Harahap

<sup>5</sup> Republic of Indonesia, *Hukum Acara Perdata Indonesia, HIR (Herziene Indonesich reglement)*, see Article 196.

because previously there was no collateral confiscation.<sup>6</sup> Execution as regulated in Article 225 HIR is execution to carry out a certain act, if the act is not carried out then the compulsion for the performance can be replaced by paying a certain amount of money.<sup>7</sup>

The purpose of the contents of this article is to assess the actions that must be carried out by the Defendant in terms of the amount of money and then the Defendant is sentenced to pay "forced money" or *dwangsom* as a substitute based on the judge's decision. For real execution, HIR does not regulate, but although HIR does not specifically regulate, Article 200 of HIR which regulates auctions mentions real execution. In practice, real executions are often carried out like clearing land, even though the HIR does not regulate this, it can be found in the RV (*Wetboek op de Burgerlijke Rechtverordering*) Staatblad 1887 Number 52 Article 1033, namely the civil and criminal procedural law that applied to European groups in the colonial era. This execution is carried out on fixed/immovable objects which is carried out by emptying the fixed objects to the Respondent for execution. The process is carried out by the Chairman of the District/Religious Court issuing an order to the bailiff to execute the Respondent's fixed/immovable objects to leave and vacate the objects. If necessary, the execution can request assistance from the police.

In current legal developments, there are also executions that are not regulated in HIR, RBg and even in RV where the manifestation is execution for carrying out certain actions, namely the execution of Environmental Decisions. One form of execution of environmental decisions is in the form of actions to restore the environment. There is a difference in the execution of environmental decisions with the execution of civil decisions in general, where the principle of execution in the HIR determines that when the execution has been carried out, the case is declared finished, whereas the procedures for executing environmental decisions do not yet have regulations that explicitly regulate the execution of damage recovery. environment.<sup>8</sup> To fill the void in this regulation, the Supreme Court has created guidelines for its implementation.<sup>9</sup> Although in principle, execution for payment of a sum

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<sup>6</sup> *Hukum Acara Perdata Indonesia, HIR (Herziene Indonesich reglement)* Article 200.

<sup>7</sup> *Hukum Acara Perdata Indonesia, HIR (Herziene Indonesich reglement)* Article 225.

<sup>8</sup> Republic of Indonesia, *Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup* jo. *Permen LHK Nomor 7 Tahun 2014 tentang Kerugian Lingkungan Hidup Akibat Pencemaran dan/atau Kerusakan Lingkungan Hidup*

<sup>9</sup> The Supreme Court of the Republic of Indonesia, Directorate General of the General Judiciary, 2019, provides guidance to District Courts that in executing recovery for environmental damage, the applicant for execution must submit an application for the

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of money and actual execution are both forced executions of decisions, the two types of execution have fundamental differences, namely:<sup>10</sup>

1. In real execution, the implementation is easier compared to executing the payment of a sum of money, where to carry out the execution of a payment of a sum of money requires the stages of confiscation execution and auction sales.
2. Real execution, implementation is only possible for court decisions that have obtained permanent legal force, immediate decisions, provisional decisions, and peace deeds made before a judge (*dading*). Meanwhile, the execution of payment of a sum of money is not limited only to court decisions as mentioned above, but can also be based on certain deeds which are based on debt and receivable legal relationships whose evidentiary and executorial strength are equivalent to court decisions which have permanent legal force, namely *grosse* debt acknowledgment deed, *grosse* mortgage deed (airplanes and ships), mortgage rights certificate (SHT), and fiduciary guarantee certificate. The execution of the deeds as mentioned above is known as *prateexecution*, which is usually proof that a legal relationship between debts and receivables has been established using certain material collateral.

One of the very important principles in the implementation of court case decisions or executions is to carry out decisions that have permanent legal force (*incracht van gewijsde*), because only decisions that have permanent legal force contain the following forms: 1) a legal relationship that is fixed and certain. between the parties to the case, 2) because the legal relationship between the parties to the case is fixed and certain, 3) this legal relationship must be obeyed and must be fulfilled by the party being punished (the defendant). Execution only applies after the decision has permanent legal force (BHT)<sup>11</sup> because what the judge has decided is considered correct and must be implemented (*Res Judicata Pro Veritate Habetur*).<sup>12</sup> The decision in

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appointment of an environmental auditor to calculate losses and recovery costs which will be used by the committee appointed to carry out the implementation. recovery.

<sup>10</sup> Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, pp. 23-28

<sup>11</sup> Subekti Subekti, *Hukum Acara Perdata* (Jakarta: BPHN, 1977), p. 128

<sup>12</sup> Sudikno Mertokusumo, *Penemuan Hukum Suatu Pengantar* (Yogyakarta: Cahaya Atma Pustaka, 2014), p. hlm 7. "*Res judicata pro veritate habetur*" is a Latin legal maxim that translates to "*a matter judged is regarded as true.*" This principle is commonly known as "*res judicata*," and it is a fundamental concept in the legal system. *Res judicata* refers to the doctrine that once a matter has been finally adjudicated by a competent court, it cannot be relitigated between the same parties. In other words, a final judgment on the merits is conclusive and binding, preventing the same issue from being reexamined in subsequent legal proceedings. The purpose of *res judicata* is to promote judicial efficiency, prevent endless litigation, and ensure the stability of legal decisions. The

question cannot be changed again, so that the legal relationship between the parties involved in the case is fixed and certain forever. Meanwhile, the meaning of execution is if the executed person does not carry out the decision voluntarily (*Vrijwillig*/free will), then the decision is carried out by force or execution with the help of general authority (police).

How to obey and fulfill the legal relations stipulated in the decision which has legal force can still be carried out or carried out voluntarily by the defendant and if the defendant is reluctant to carry out voluntarily the legal relations stipulated in the decision must be carried out by force with the help of general authority. Even though the decision has permanent legal force, which means that the decision cannot be changed again, so that the legal relationship between the Plaintiff and the Defendant or the parties is fixed and certain, Indonesian civil procedural law still provides opportunities for the parties in the case themselves and third parties. (outside the parties to the case) to review decisions that have permanent legal force by submitting opposition or objections to the implementation of the decision by the parties who are the subject and object of the decision in the case that is to be executed.

Terminologically, the execution of the decision is "*the act of getting an officer of the court to take possession of the property of the losing party in a lawsuit, called the judgment debtor, on behalf of the winner, called the judgment creditor, sell it and use the proceeds to pay the judgment*" (The action of court officials on behalf of the winning creditor, to confiscate the goods belonging to the defeated debtor and then sell them and the proceeds from the sale are used to pay the debtor's debt to the creditor in the amount stated in the court decision). Execution in Indonesian terminology means "*implementation of a decision*". The word execution in HIR and RBg is defined as "The act of carrying out a decision" (*ten uitvoer legging van vonnissen*).<sup>13</sup> Yahya Harahap<sup>14</sup> defines execution as "forcibly carrying out" a court decision with the help of general power if the losing party (executed or

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phrase "pro veritate habetur" emphasizes that the matter is considered true or settled based on the prior judgment. It signifies that the court's decision is accepted as the truth regarding the legal issues involved, and the parties are bound by that determination. *See also* Widowati Widowati, and YA Triana Ohoiwutun. "Kepastian Hukum Putusan Yang Melanggar Special Straf Maxima." *Jurnal Yudisial* 14, no. 1 (2021): 1-18.

<sup>13</sup> Robitum Maftukh Zakariyah, and Ahmad Riyadh U.B. "Juridical Overview Regarding the Unenforceability of Court Decisions in Civil Cases That Have Permanent Legal Force (INKRACHT): Tinjauan Yuridis Tentang tidak dapat Dilaksanakannya Putusan Pengadilan dalam Perkara Perdata yang Telah Mempunyai Kekuatan Hukum Tetap (INKRACHT)", *Indonesian Journal of Public Policy Review* 11 (2020): 1-7

<sup>14</sup> M. Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2007), p. 898.

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the defendant) does not want to carry it out voluntarily (*vrijwillig*, voluntary). Likewise, Abdul Manan<sup>15</sup> is of the opinion that execution is a matter of carrying out a court decision that has permanent legal force by force and contains an order for one of the parties to do something, for example paying a certain amount of money, vacating an object, dismantling it, and so on, while the losing party is unwilling to do so. implement the decision voluntarily. Execution in civil procedural law is the final series of a litigation process, which begins with the process of examining, adjudicating and resolving a civil dispute, although not all civil disputes require execution. The importance of carrying out executions as a manifestation of justice and legal certainty for society is so important that the execution or implementation of a decision must be carried out carefully and it is not permitted to depart from the dictum of a decision (*execution est execution juris secundum iudicium*), except in certain cases, execution can This is done differently from the initial dictum of a decision which has permanent legal force. For example, in a decision whose dictum punishes the defendant or the executed person to continue construction of a building, but after the execution is carried out, the executed person turns out to be unwilling to do so and just remains silent.<sup>16</sup>

Furthermore, Wildan Sayuthi<sup>17</sup> stated that the execution of civil cases is a process that is quite tiring for the litigants, apart from consuming time, energy, costs, energy and thoughts. The decision doesn't mean anything if the result is just a black and white decision. Victory that is right before our eyes sometimes still requires a long process to get it in real/concrete terms. This happens because in practice the implementation of executions often encounters many obstacles, especially because the losing party generally finds it difficult to accept defeat and tends to reject decisions that have permanent legal force in various ways, thus making the chairman of the court have to step in to expedite the execution process.<sup>18</sup>

Based on the principle of civil procedural law that the parties are active, however, the court of first instance also provides convenience by providing

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<sup>15</sup> H. Abdul Manan, "Eksekusi dan Lelang dalam Hukum Acara Perdata", *Paper*, Rakernas 2011 Mahkamah Agung dengan Pengadilan Seluruh Indonesia, Jakarta 18-22 September 2011. Available online at <https://kepaniteraan.mahkamahagung.go.id/images/artikel/eksekusi%20dan%20lelang%20dalam%20hukum%20acara%20perdata.pdf>

<sup>16</sup> Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, p. 501

<sup>17</sup> Wildan Sayuthi, *Sita Eksekusi Praktek Kejurusitaan Pengadilan*. (Jakarta: PT Tatanusa, 2004). p. 6

<sup>18</sup> Sayuthi

fast, precise and accurate services in handling executions.<sup>19</sup> However, in reality, various obstacles are sometimes encountered in implementing the decision, such as resistance from third parties before the execution is carried out. The execution is postponed until there is a decision against it in the court of first instance stating that it refuses and the execution is continued even though there are legal efforts. On the other hand, if the resistance is granted, the execution is suspended until the decision on the resistance has permanent legal force. Apart from third party resistance, things that hinder execution are:

1. The execution is stopped until the reprimand process is complete, even if the Respondent to the execution is not willing to carry out the decision independently. The forced execution of the decision cannot be continued because the Petitioner is passively executing it
2. After completing the *aanmaning* stage, the execution applicant does not report to the district court/religious court that the execution respondent has not implemented the decision voluntarily.
3. The object of execution has changed to state property
4. The applicant for execution cannot show the assets of the applicant for execution to be confiscated
5. The execution auction requirements have not been fully fulfilled by the execution applicant so that the implementation of the execution auction has been delayed
6. After the execution request is received by the district/religious court, the execution applicant has not paid the execution down payment fee, the amount of which has been determined in the SKUM
7. The object of execution is involved in other matters
8. Humanitarian aspects such as having to dismantle the house of the execution respondent which is on the land of the execution object

Of the types of obstacles to execution from number 1 to number 8 are more administrative in nature, while obstacles due to resistance from third parties and self-execution are part of the legal process itself. Apart from these factors, it turns out that there are other causes that hinder the execution of civil decisions, namely:<sup>20</sup>

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<sup>19</sup> Pengadilan Tinggi Bandung, "Prosedur Eksekusi", retrieved from <<https://pt-bandung.go.id/prosedur-eksekusi.html>>

<sup>20</sup> Muhammad Tanzil Aziezi, "Membangun Sistem Eksekusi Putusan Perdata Yang Efektif dan Efisien", *Presentation of LeIP (Lembaga Kajian Advokasi & Independensi Peradilan)*, 2019. Retrieved from <[https://leip.or.id/wp-content/uploads/2019/10/Materi-Diskusi-Publik-Muhammad-Tanzil-Aziezi\\_Membangun-Sistem-Eksekusi-Putusan-Perdata-yang-Efektif-dan-Efisien.pdf](https://leip.or.id/wp-content/uploads/2019/10/Materi-Diskusi-Publik-Muhammad-Tanzil-Aziezi_Membangun-Sistem-Eksekusi-Putusan-Perdata-yang-Efektif-dan-Efisien.pdf)>

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1. Standards for the execution of civil decisions are not the same, this occurs because of the lack of uniformity of procedures between courts in executing civil decisions.
2. Limitations of the head of the court and bailiff in carrying out the execution of civil decisions, this is due to the workload of the head of the court and the bailiff being very large in line with the increasing number of cases in court.
3. The lack of competence of Bailiffs, because bailiffs with limited capacity rarely receive bailiff training, but must carry out asset tracing of the defendant's execution, negotiate with the parties, and so on.
4. The lack of regulations regarding the execution of civil decisions, where the current regulations regarding the execution of civil decisions are the *Herziene Indonesisch Reglement (HIR)*, *Buitengewesten Reglement (RBg)*, *Rechtvordering (RV)*, Law no. 48 of 2009 concerning the power of the Judiciary, Law no. 2 of 1986 concerning the General Court and its amendments
5. Law no. 7 of 1989 concerning Religious Courts and its amendments, Guidelines for executions in District Courts and Religious Courts.
6. The lack of legislative and executive support in guaranteeing and ensuring the smooth execution of civil decisions is reflected in the fact that the DPR and the government have not paid special attention to the reform of civil procedural law.
7. Legislative regulations do not support the implementation of executions effectively and efficiently, such as unclear rules regarding who must look for information on the assets of the respondent who will be confiscated for execution, the absence of regulations that can provide access to execution applicants to find out the assets of the applicant for execution in the application for confiscation execution.

Legislation does not explicitly provide a definition of third party resistance or *derden verzet*.<sup>21</sup> However, the provisions governing *derden verzet* are contained in article 195 paragraph (6) HIR, Article 206 paragraph (6) Rbg, Article 378 RV, 279 RV which can be stated as follows:

Resistance to the decision, also from other people who claim that the goods confiscated belong to them, is brought before and tried, such as all disputes regarding coercive measures ordered

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<sup>21</sup> Subekti, *Hukum Acara Perdata*, p. 135

by the district court, in whose jurisdiction the decision takes place.<sup>22</sup>

Resistance also comes from third parties, based on property rights recognized by them which are confiscated for the implementation of the decision, as well as all disputes regarding ordered coercive measures, shall be tried by the district court which has the jurisdiction where the actions are carried out to implement the judge's decision.<sup>23</sup>

Third parties have the right to fight against a decision that is detrimental to their rights, if they personally or their legally authorized representatives, or the party they represent are not summoned at the court hearing, or because of the merger of cases or interference in cases been a party (Civil Code Article 383, Article 452, Article 833, Article 955, Article 1917), RV (Article 279, Article 349, Article 382, Article 384).<sup>24</sup>

If such a decision is handed down against a third party in a trial and opposition to it is carried out in accordance with another article, then the judge examining the case has the authority if there are reasons to permit the postponement of the case until the opposition case is decided.<sup>25</sup>

Based on the provisions of these articles, in essence *derden verzet* is a third party's opposition to a court decision which has permanent legal force and is detrimental to the third party. Regarding this matter, in order to obtain validity in the opposition efforts, there are several conditions that need to be taken into account as regulated in the Civil Code,<sup>26</sup> namely if: The matter being sued must be the same, the claim is based on the same grounds, and must be filed by the same party, towards the same parties in the same relationship.

*Derden verzet* is also regulated in another article in the RV, which stipulates "The objection is examined by the judge who handed down the

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<sup>22</sup> Civil Procedure Law for the Java and Madura regions, *Herziene Indonesich Reglement (HIR)*. See Article 195 verse (6)

<sup>23</sup> Civil Procedure Law for the Java and Madura regions, *Rechtreglement Voor de Buitengewesten (RBg)* See Article 206 verse (6)

<sup>24</sup> *Wetboek op de Burgerlijke Rechtvordering* namely the civil procedural law that applied to European groups in the colonial era. Listed in Staatblad 1847 Number 52, 1849 number 63, Article 378.

<sup>25</sup> *Ibid*, see Article 380.

<sup>26</sup> *Kitab Undang-undang Hukum Perdata (Indonesian Civil Code)*, see Article 1917.

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decision. The opposition is submitted with a summons to appear before the court against all parties who have received a decision and the general rules regarding how to litigate apply in this opposition.<sup>27</sup> In this way, the judge who examines the *derden verzet* is also the one who makes the decision in the contested case, therefore the litigants will be summoned, including third parties, to notify them of the legal action of the *derden verzet*.

In a civil lawsuit, the plaintiff in the lawsuit can actually ask for an immediate decision, and if the decision is granted then if the decision can be implemented despite resistance, and as long as there is no immediate decision, then the examining judge has the right to postpone the implementation of the decision for the case filed is contested until the opposition is decided.<sup>28</sup> Not all lawsuits requesting a decision are immediately granted by the judge, because there are special requirements that must be fulfilled,<sup>29</sup> namely 1) The decision is based on an authentic right, 2) The decision is based on a private letter acknowledged by the parties, 3) In existing punishment with a previous judge's decision against which no challenge can be filed or no appeal can be made.

If the application for *derden verzet* is granted, then according to Article 383 R.V the decision being challenged must be immediately corrected, limited to matters that are detrimental to third parties, except for decisions that cannot be divided and require the cancellation of the decision in its entirety.

The emergence of resistance from defeated defendants and third parties is due to the principle in the Law on Judicial Power which stipulates "*Courts are prohibited from refusing to examine, try and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it*" (*ius curia novit principle*)<sup>30</sup> This principle has the consequence that the execution of civil decisions becomes prolonged or protracted, even though the decision has permanent legal force, it cannot be executed because of resistance from both the losing defendant and third parties who feel that the object to be executed is his. For this reason, it is necessary to make a breakthrough by perfecting the provisions in civil procedural law by eliminating or adding existing provisions in order to create efficient execution of civil decisions.

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<sup>27</sup> *Op.Cit* Article 378 R.V

<sup>28</sup> *Ibid*, Article 381

<sup>29</sup> *Wetboek op de Burgerlijk Rechvordering, Pasal 54 dan Surat Edaran Mahkamah Agung Nomor 3 Tahun 2000 yang Mengatur tentang Syarat-Syarat Putusan Serta Merta*

<sup>30</sup> Republic of Indonesia, *Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman*, See Article 10 verse (1)

In fact, the weaknesses in the regulation of the implementation of civil decisions/executions have been recognized and understood by stakeholders, namely people seeking justice, judges, rule makers or legislators. The government/executive, the judiciary, the campus world or judicial observers, in fact they have all taken steps to improve existing regulations. One of the efforts to improve is carried out by efforts to reform the law, renewal of the civil procedural law has been carried out for a long time, where several draft laws on civil procedural law have been successfully formulated by the drafting team, including the 1984 Bill, the 1991 Bill, The 1994/1995 Bill, a bill resulting from discussions by the Inter-Departmental Team and the Directorate of Legislation of the Ministry of Justice of the Republic of Indonesia in 1995/1996, but to date it has not become law, so the applicable provisions still use HIR, RBg and RV.<sup>31</sup>

Philosophically and sociologically, reform of civil procedural law needs to be carried out to provide support to government administrators and national development to create justice and prosperity for society.<sup>32</sup> Juridically, the regulation of civil procedural law is not only regulated in HIR/RBg and RV which are colonial products, but is also spread in various statutory regulations and sociologically, the very rapid development of society and the influence of globalization requires improvements in order to be able to overcome dispute resolution in the field of civil law in an effective and efficient manner. Even though it does not cover everything, it can be said that some of the substance of HIR/RBg and RV can be said to no longer be in accordance with current dynamics and needs, so that many legal gaps are found in civil justice practice. In filling this legal vacuum, in practice it has been filled by enacting various specific statutory regulations through Supreme Court Jurisprudence, Constitutional Court Decisions, issuing PERMA and SEMA. Even though the Supreme Court has adopted this policy to fill legal gaps, these efforts can be said to be partial, sectoral or patchy and legal reforms have not yet been carried out in a more systematic, unified or codified manner.<sup>33</sup> Renewing civil procedural law through a complete civil procedural law will accelerate the realization of the desired civil procedural

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<sup>31</sup> Badan Pembinaan Hukum Nasional, Kementerian Hukum dan Hak Asasi Manusia RI, *Naskah Akademik Rancangan Undang-Undang tentang Hukum Acara Perdata*, (Jakarta: BPHN, 2015)

<sup>32</sup> Tan Kamelo, *Hukum Perdata: Hukum Orang dan Keluarga*, (Medan: USU Press, 2011) p. 11

<sup>33</sup> R. Benny Riyanto, "Pembaharuan Hukum Acara Perdata", *Discussion Paper LeIP*, 2019. Retrieved from <[https://leip.or.id/wp-content/uploads/2019/10/Materi-Diskusi-Publik-Prof-Dr-H-R-Benny-Riyanto-SH-MHum-CN\\_Pembaruan-Hukum-Acara-Perdata-Indonesia.pdf](https://leip.or.id/wp-content/uploads/2019/10/Materi-Diskusi-Publik-Prof-Dr-H-R-Benny-Riyanto-SH-MHum-CN_Pembaruan-Hukum-Acara-Perdata-Indonesia.pdf)>

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law. In order to accommodate and normalize the various needs of modern judicial practice, the substance of which is not regulated in HIR/RBg and RV, as well as to anticipate the direction and trend of development of Indonesian civil justice practice in the future by taking into account the dynamics of the development of science and technology as well as patterns of public relations.

In the practice of civil case trials, obstacles are often found because the articles in the HIR/RBg and RV are very behind developments in society, because of the new problems faced by judges in civil trials, such as problems that have not been regulated at all in the HIR/RBg and RV, thus creating difficulties for the parties and the judge who will make considerations in their decision. Likewise, there is the principle of *ius Curia novit*, which means that the court is prohibited from refusing to examine, try and decide on a case submitted on the pretext that the law does not exist or is unclear, so that this principle will have an impact on decisions that already have permanent legal force and have been submitted for execution. , however, the requested execution became raw again because of the registration of opposition to the execution of the civil decision. According to the author, this paradigm is not in accordance with the values of justice that live in a society that always wants legal certainty and the achievement of the principles of justice that is fast, simple and low cost, especially if the aim of the resistance carried out by the executed is only to delay the execution, or cancel it. execution by stating that the decision to be executed is not binding.

The Chief Justice of the Republic of Indonesia in his speech before the World Enforcement Conference (WEC 2019) in Shanghai, China, explained topics regarding the latest developments in execution organs and their working mechanisms.<sup>34</sup> The topics raised are about the latest developments

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<sup>34</sup> World Enforcement Conference (WEC 2019) held by the Supreme People's Court (SPC) of the People of the Republic of China on 21-23 January 2019 in Shanghai, China. In his presentation, the Chief Justice of the Republic of Indonesia explained that currently Indonesia has pioneered efforts to modernize case management, which, although not yet perfect, is a reform in the field of civil execution, but is very relevant to the future of reforming the civil justice system as a whole. The Chief Justice of the Supreme Court of the Republic of Indonesia cited 3 (three) important things, First, improving the time limits for handling cases through work system reform as in Supreme Court Circular Letter Number 2 of 2014 concerning Settlement of Cases in Courts of the first level and the Hearing Level in 4 (four) Judicial Environments and Letter from the Chairman of the Supreme Court Number 214 of 2014 concerning the Time Period for Handling Cases at the Supreme Court which has effectively accelerated the time for resolving cases and reducing case arrears. Second, the implementation of technology and information which enables innovation and simplification of work processes and monitoring and evaluation of work more effectively and efficiently to serve the public, including Supreme Court Regulation number 3 of 2018 concerning Electronic Administration of Cases in Court. Third, a quality assurance initiative that encourages

in execution organs and their working mechanisms. Effective and efficient execution of civil decisions is a challenge faced by every country, because realizing effective implementation and execution mechanisms is one of the important factors in realizing public trust and confidence in judicial institutions. It turns out that the problem of weaknesses in regulations for the execution of civil decisions also occurs in China, the SPC chairman said,<sup>35</sup> modernizing execution procedures is an important part of China's commitment to upholding the rule of law in his country. The implementation of valid legal instruments is the key to judicial procedure and is important to ensure clear implementation of law and maintain judicial authority and purity. Apart from that, it is also important to implement the right rights and interests of the parties in a timely manner, build the rule of law and support social and economic growth, and it turns out that China is also experiencing difficulties in enforcing decisions due to the limited objective situation and the backlog of executions which continues to grow every year. . These difficulties include difficulties in identifying objects, selling collateral, human resources and hardware investment, which have hampered economic growth. To increase the effectiveness of executing civil decisions, China's Supreme Court has established a network of investigation and supervision systems from head office to head office (Headquarters to headquarters). This system is connected to 16 Ministries/Institutions such as the Ministry of Public Security, Ministry of Population Affairs, Ministry of Natural Resources and more than 3,900 financial institutions. Through this system the Chinese Supreme Court can retrieve no less than 25 types of information in 16 categories such as real estate, bank deposits, financial products, ships, vehicles, shares, online funds and so on.

From the implementation of the 2019 WEC, it can be said that difficulties in implementing the execution of civil decisions also occur in other countries, therefore it turns out that several countries have changed or perfected the arrangements for implementing the execution of civil decisions.

The execution of civil decisions in Germany, Italy and the Netherlands, these three countries have similarities with Indonesia because the execution of civil decisions is carried out by the courts, the difference is regarding the

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all work processes to be carried out in a standardized manner both in terms of time and quality, including using the International Standard Framework for Court Excellence (IFCE) as a quality assurance parameter. The Chief Justice of the Supreme Court also emphasized that in the future the execution system agenda is also on the important agenda. reform of the justice system in the future. *See* World Enforcement Conference of Shanghai, <<https://www.uihj.com/2019/01/22/world-enforcement-conference-of-shanghai/#>>

<sup>35</sup> *Ibid*

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responsibility for execution.<sup>36</sup> In Indonesia, the responsibility for execution lies with the Chairman of the court, whereas in these three countries, although the implementation is carried out by the court, the responsibility is not placed on the Chairman of the Court.

In German practice, the implementation of auctions is entirely carried out by enforcement officers, which in auctions involve units in the court, namely the Department for Enforced Auction for real estate and the Department for Enforcement for other claims, such as savings and salaries, and other property rights. This practice has similarities in the Netherlands where the implementation of auctions. In Germany, the execution is the responsibility of the court, the executor is a court employee called a *Rechtspfleger* who carries out his duties and is regulated in the *Rechtspflegergesetz* as rules that complement the Code of Civil Procedure or *Zivilprozessordnung* (ZPO) / Civil Procedure Code. The *Rechtspfleger* was first formed in 1909 to carry out the authority and duties of judges. In general, the authority and duties of the *rechtspfleger* regarding execution are (a) examining requests for execution; (b) make a decision on the request for execution, and if the request is granted, issue a writ of execution; (c) issue and sign a copy of the decision and extract of the decision to be given to the parties; (d) sign and issue an enforceable execution copy; and (e) summon the losing party to provide a list of assets owned carried out entirely by the judicial officer as executor of civil cases.<sup>37</sup>

The execution of civil decisions in the Netherlands is outside the court, which is carried out by a private party called *Koninklijke Beroepsorganisatie van Gerechtsdeurwaarders* (KBvG) or The Royal Professional Organization of Judicial Officers in The Netherlands. KBvG is a judicial professional organization formed based on the Law on Judicial Officers, which has the main task of maintaining the honor and rights of professional and qualified judicial officers. Meanwhile, the main duties of judicial officers are basically similar to those of bailiffs but with broader authority. KBvG is an independent institution, not tied to the government or judicial power (court). KBvG also does not receive financial support from the state budget, however, based on the law, it is permitted to ask for fees/tariffs for services provided to service users.<sup>38</sup>

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<sup>36</sup> Aziezi, "Membangun Sistem Eksekusi Putusan Perdata Yang Efektif dan Efisien",

<sup>37</sup> See Tilman Eichstädt, "Applying auction theory to procurement auctions—an empirical study among german corporations." *Negotiation, Auctions, and Market Engineering: International Seminar, Dagstuhl Castle, Germany, November 12-17, 2006, Revised Selected Papers*. (Berlin: Springer Berlin Heidelberg, 2008).

<sup>38</sup> See Eddy Bauw, "Commercial Litigation in Europe in Transformation: The Case of the Netherlands Commercial Court." *Erasmus Law Review* 12, no. 1 (2019): 15-23.

The duties of judicial officers include: (a) implementing civil court decisions; (b) carrying out summons in civil cases; (c) serving requests for legal warnings; (d) collecting debts from third parties for cases whose proceedings have not yet become cases in court; (e) carry out wealth and tax inventories; (f) in certain conditions and cases judicial officers also have the authority to carry out detention, for example detaining a respondent who does not pay child care costs as determined by the court; (g) enter the defendant/debtor's house; (h) manage digital records related to the implementation of duties and authority, including data and information on all collateral confiscations. Thus, the implementation of decisions does not fall under the authority of the judiciary, nor the executive and legislative bodies. The task of the judiciary is considered complete when the decision has been handed down. Judicial institutions have no authority to monitor or manage the implementation of decisions and every citizen must obey the law.

For the execution of civil decisions in Italy,<sup>39</sup> execution is handled by an execution judge whose existence is regulated in Book III of the Italian Civil Procedural Codes (CPC) or Italian civil procedural law. Execution judges are found at every level of court, including appellate courts. The execution judge is tasked with examining whether or not a decision can be executed, to ensure that the execution is legal according to the law. Each request for execution is examined and decided by the execution judge as the party who will issue the precetto or execution instructions. In Italy, if the execution judge determines that the auction is declared open to the public, the execution judge will appoint a clerk, bailiff, or institution authorized to conduct the auction, whereas if it is determined that the auction will be held in private, then the execution judge will appoint a commission agent with a certain fee to hold an auction.

The execution of civil decisions in Indonesia is under the leadership of the chairman of the court, so it is normal for the execution to be slower considering that the duties of a chairman of the court of first instance are very busy, because apart from managing and being responsible for the running of trial activities he is also burdened with the implementation of existing decisions.

Due to the weaknesses that occur in the execution of civil decisions, steps need to be taken in order to create an effective and efficient execution. The steps taken can be in several ways, namely:

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<sup>39</sup> See Luigi Condorelli, and Luigi Sbolci. "Measures of execution against the property of foreign States: the law and practice in Italy." *Netherlands Yearbook of International Law* 10 (1979): 197-231.

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1. By making comprehensive changes or replacing statutory regulations in the field of civil procedural law, namely HIR/RBg and RV, replaced with a new civil procedural law. In fact, this has been done for a long time, several draft civil procedural law bills have been successfully formulated by the drafting team, namely the 1984 Bill, the 1991 Bill, the 1994/1995 Bill, the Bill resulting from discussions by the Inter-Departmental Team and the Legislation Directorate of the Indonesian Ministry of Justice in 1995/1996, but to date none of them have been passed into law.
2. If partial changes are made, then the articles are no longer in accordance with current developments and tend to be detrimental to the execution applicant, such as the article regarding resistance by third parties or execution respondents, namely Article 196 paragraph (6) HIR, Article 206 paragraph (6 ) RBg, Article 378 RV, Article 279 RV, and the principle of *ius curia novit* in Article 10 paragraph (1) of Law Number 48 of 2009 concerning Justice are applied by screening, meaning they are applied if they fulfill the requirements made in the preliminary process in submitting a *derden verzet*. Indeed, revoking the principle of *ius curia novit* is something that is very difficult considering that this principle is a principle that must exist in the judicial process to provide opportunities for those seeking justice, as well as the resolution regarding resistance to the execution of civil decisions, because these articles are an opportunity for those who feel that their rights have been oppressed by a decision to fight for their rights in order to achieve justice. For this reason, to guarantee the principle of justice, the principle of certainty and the principle of expediency, regulations at the level of law are needed to filter out resistance to the execution of civil decisions, as regulated in the State Administrative Court, namely the Dismissal Procedure or dismissal process which is the research process of the Assembly. Judges at the State Administrative Court before State Administrative Disputes are examined at trial. This research is intended to assess whether the lawsuit is worth continuing or not. This meeting was held briefly in a deliberative meeting by the chairman of the Court. This process can be imitated so as not to violate the principles contained in civil procedural law and at the same time to carry out the execution of civil decisions effectively and efficiently.

### Conclusion

In light of the discussions presented in this article, the reluctance of parties to voluntarily comply with court decisions stems from a variety of

factors. Internally, obstacles may arise from individuals involved in the execution, such as a lack of respect or understanding of the court's decision or a desire to secure individual victories. Externally, opportunities for resistance are provided by civil procedural laws, specifically articulated in articles governing opposition to decision execution, as outlined in Article 195 paragraph (6) HIR, Article 206 paragraph (6) RBG, Article 378 RV, and Article 279 RV. In order to establish a more effective and efficient civil decision execution system, a viable strategy involves the replacement of the existing civil procedural laws, namely HIR/RBg and RV, with a modernized counterpart. Should the implementation of an entirely new procedural law prove unfeasible, targeted efforts can be directed toward selectively amending outdated articles within HIR/RBg and RV to align with current developments. To enhance the efficacy and efficiency of civil decision execution without overhauling existing regulations, additional measures can be incorporated. This includes introducing or refining procedures akin to those found in state administrative procedural law, such as dismissal examinations or procedures. The dismissal examination serves the dual purpose of evaluating the viability of opposition claims and potentially delaying execution, thereby fostering an effective execution system that inherently promotes efficiency in its implementation.

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