



Pandemi Covid-19 As A Factor of Delays in The Execution of Court Decisions

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Abstract

Judicial decisions that have permanent legal force contain definite and permanent legal rights and positions between the litigating parties that must be realized through execution. Execution is a forced effort by the court against the defendants who don't want to implement the judicial decisions voluntarily. The aim of this research is to know the factors that caused the delay in the implementation of the real execution in civil case No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019 at Purwakarta District Court. This research uses empirical legal research methods with a qualitative approach. To be able to obtain the necessary data, the authors use several methods, namely interviews and document analysis. The results of this research show that third-party resistance and the COVID-19 pandemic are factors causing the delay in the real execution of civil case no. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019. In principle, even if there is resistance, the execution is not absolutely delayed unless the reason for the resistance is rational; in that case, the execution is delayed at least until the resistance is decided by the District Court. Meanwhile, health reasons and the government's policy not to carry out activities that create crowds (Physical Distancing) are the basis for considering the COVID-19 pandemic as the cause of the delay in the real execution. Execution is the authority of the Head of the District Court in the form of policy. Thus, executions in civil cases have been delayed because of third-party resistance, and the COVID-19 pandemic is the policy of the Head of the District Court, which has been given by law. Execution is the authority of the Head of the District Court in the form of policy. Thus, executions in civil cases have been delayed because of third-party resistance, and the COVID-19 pandemic is the policy of the Head of the District Court, which has been given by law. Execution is the authority of the Head of the District Court in the form of policy. Thus, executions in civil cases have been delayed because of third-party resistance, and the COVID-19 pandemic is the policy of the Head of the District Court, which has been given by law.



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A. Introduction

Aristotle said that man is a *zoon politicon*. As a *zoon politicon*, humans have different views or opinions which are generally the cause of disputes or conflicts¹. Humans are social beings who interact with each other. The interaction between the parties will create a certain legal relationship. Legal relations will give rise to rights and obligations that must be mutually fulfilled by the parties². However, the fulfillment of rights and obligations between the parties is often neglected, giving rise to different interpretations and disagreements which can lead to disputes, one of which is civil disputes. In civil procedural law, the term "procedure" in a narrow sense includes actual procedural actions in a court session, namely from the first trial to the last session, namely the decision made by the judge.³

Examination of cases in court ends with the imposition of a decision by the judge. This is in accordance with what is stated in Article 178 HIR/Article 189 RBg. The passing of the judge's decision is the ultimate goal of the case examination process in the District Court. In the final decision, the legal relationship and rights of the disputing parties are determined with certainty⁴. The logical consequence is, if a court decision that has permanent legal force has been dropped, the party who won the case hopes to get his rights, namely by carrying out the decision or in other words execution.⁵

After all legal efforts have been taken, the court decision which has permanent legal force (in *kracht van gewijsde*) must be accepted by the parties to the dispute. As a result, the party declared to have lost is obliged to realize the decision voluntarily. Realizing a decision voluntarily means that the losing party accepts and complies with the contents of the decision without any coercion by the court. However, if the decision is implemented voluntarily by the losing party, it is not a problem. If the losing party realizes the decision has permanent legal force and fulfills the rights of the party won, then the dispute between the parties can be said to have been resolved.

Thus, execution can be carried out if the losing party does not want to realize the results of the court decision voluntarily, then forced efforts will be made with the help of the court so that the decision can be carried out or executed. Therefore, between carrying out a decision voluntarily and carrying out a decision with execution are two different things.⁶

Execution can be carried out when the winning party has made an execution application and submitted it to the Chief Justice of the District Court, then the clerk/bailiff will carry out the execution process⁷.

Decision of the Purwakarta District Court Number 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019, this case has permanent legal force on December 16 2019. In one of the verdicts punish the losing parties (the defendants) to leave empty and hand them over unconditionally to the plaintiffs and if necessary the handover is carried out by force through police assistance for the object of the case, a plot of land in Persil 52 and a building located at Jalan Kopi, RT. 001, RW. 004, Ciwareng Village, Babakan Cikao District, Purwakarta Regency. However, the defendant also did not implement the contents of the decision until

1 Herbert Gintis et.al, "Zoon Politicon: The Evolutionary of Human Political Systems" *Current Anthropology* 56, No.3 (June 2015):340-341.

2 Dian Latifiani and Mitha Ratnasari, *The Small Claim Court To Realize The Fast And Simple Principle In Civil Disputes Resolution*, South East Asia Journal Of Contemporary Business, Economics and Law. Vol 18, 2019, p. 7

3 Dian Latifiani, "Permasalahan Pelaksanaan Putusan Hakim", *Jurnal Hukum Acara Perdata (ADHAPER)* 1, No.1 (Januari-Juni 2015), 17.

4 Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan, Pembuktian Persidangan, Penyitaan* (Jakarta: Sinar Grafika, 2017), 888

5 Syprianus Aristeus, "Eksekusi Ideal Perkara Perdata Berdasarkan Asas Keadilan Korelasinya Dalam Upaya Mewujudkan Peradilan Sederhana, Cepat dan Biaya Ringan (Ideal Execution of Civil Law Based on Principles The Justice of Correlation in Efforts to Reach Simple, Fast Justice and Light Fee)", *Jurnal Penelitian Hukum De Jure* 20, No.3 (September 2020), 380.

6 Adityo Wahyu Wikanto et.al, "Eksekusi Riil Dalam Perkara Perdata Tentang Pengosongan Tanah dan Bangunan Rumah", *Jurnal Verstek* 2, No.2 (2014), 2-3.

7 M. Naefi & Dian Latifiani, "Akibat Hukum Putusan Gugatan Sederhana Tidak Dijalankan bagi Para Pihak", *Pandecta*, Vol 16 No.2, Desember 2021, p. 336

the plaintiff filed a Request for Execution on May 6, 2020. The case experienced a delay in execution of 1 year, 9 months, 14 days.

This study uses empirical research. The data used are Primary Data and Secondary Data with data collection techniques are interviews and document studies. In this research, interviews will be conducted with the Chairperson of the Purwakarta District Court, the Registrar and Bailiff of the Purwakarta District Court.

B. Result and Discussion

Real Execution Mechanism of Civil Cases at the District Court

In principle, only decisions of judges who are already committed can be carried out. However, not all of the decisions of the judges who have been inaugurated can be carried out, because only decisions that are condemnatory in nature can be executed, namely decisions containing an order for a party to commit an act.⁸

Execution comes from the word execute. Execution has meaning with the act of carrying out a decision (ten uitvoer legging van vonnissen)⁹. The real execution mechanism in the District Court as follows :

Execution Application

The execution of civil cases begins with a request for execution from the applicant. The measure for determining that the losing party does not comply with the decision voluntarily is not regulated in the law. However, generally it can be determined based on a reasonable period of time. According to Yahya Harahap, if after a week or ten days the defendant does not carry out the decision voluntarily, then he is considered unwilling to carry out the court's decision voluntarily.¹⁰

The request for execution shall be submitted to the Head of the District Court where the case in question was decided and has permanent legal force, this is in accordance

with what is stated in Article 195 paragraph (1) HIR & 206 paragraph (1) RBG. The request for execution can be submitted in written form (letter) or orally in accordance with Article 196 HIR & Article 207 paragraph (1) RBG.

According to Hasanudin as Head of the Purwakarta District Court. Before executing the request. The applicant filed an application letter in advance and has not been registered with the Court. Then the court will conduct a review by the clerk whether the object of the case can be executed or not. Then if the object of the case can be executed, it will be notified to the applicant to be registered with the Court by paying a down payment for execution. In Case No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019, the request for execution was filed by the winning party/applicant for execution through their attorney on May 6 2020.

Aanmaning (Warning)

After the request for execution is made, aanmaning (warning) will be given to the execution respondent (defendant) by the Chairperson of the District Court. Aanmaning is issued in the form of a stipulation of an aanmaning order by the Chief Justice.

In case No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019, the Chairperson of the Purwakarta District Court has issued Determination Number 3/ Pen/Aan/Pdt.Eks/2020/PN Pwk dated May 6, 2020 regarding summons for reprimand (aanmaning) to the defendant/respondent. On the day and date determined by the Defendant/Respondent for Execution VII, he appeared before the Chairperson of the Purwakarta District Court, while the other defendants/respondents for Execution did not appear before the Chairperson of the Court. The Chairperson of the Purwakarta District Court issued another warning on June 3, 2020 to the Defendants/Defendant for Execution and on that date the defendant/respondent for the execution was present accompanied by his attorney.

Based on Article 196 HIR and 207 paragraph (2) RBG the maximum limit for aanmaning given by the Chief Justice to the

8 Retnowulan Sutantio & Iskandar Oeripkartawinata, *Hukum Acara Perdata dalam Teori dan Praktik* (CV Mandar Maju:Bandung, 2019), 126.

9 Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata Edisi Kedua Cetakan ke-7* (Jakarta : Sinar Grafika, 2014), 6.

10 Ibid, 31.

respondent is no longer than 8 (eight) days to voluntarily comply with the decision. If during the summons for aanmaning the respondent is not present and the absence is without a proper reason (Default Without Legal Reason), then it is considered as a refusal to fulfill the summons.¹¹

Warnings must be made in an incidental hearing attended by the Chairperson of the Court, the court clerk and the party being executed. All events that occur during an identical session are recorded in the Minutes (Article 196 HIR/207 paragraph (2) RBC).

Against the losing party who does not comply with the aanmaning summons without proper reasons based on Article 197 paragraph (1) HIR and 208 paragraph (1) RBC, his right to be warned is automatically terminated, his right to be given a grace period of warning is lost and ex-officio, the Head of the District Court can immediately issue a stipulation of an execution confiscation order.

Establishing

Prior to the execution of the confiscation, the court clerk, bailiff and the National Land Agency (BPN) will first carry out the constatement in the presence of 2 witnesses (Article 93 paragraph (2) PP No. 18 of 2021 Concerning Management Rights, Land Rights, Flats Unit and Land Registry). According to Neneng Warlinah as Registrar of the Purwakarta District Court, Konstatering aims to determine the boundaries and area of the execution site so that clear results are obtained in accordance with the court's ruling. Constating is proven by letters/certificates shown by BPN employees.

Execution confiscation

Before the Chief Justice issues an Execution Determination Order, an Execution Confiscation must first be carried out on the object of the case in accordance with Article 197 HIR/208 RBC which reads:

"If it is past the allotted time, while the person who lost has not yet complied with the decision or if that person, after being summoned legally does not appear, the Chief Justice because of his

position will give an order by letter, so that some movable property is confiscated or if it is not sufficient or not, so much of the immovable property of the person who loses is considered sufficient to replace the amount of money decided by the court and all costs for carrying out the court decision."

According to the Bailiff of the Purwakarta District Court, Nandang Saprudin stated that the purpose of the execution confiscation was to secure the defendant's assets so that the assets that were the object of the execution were not transferred or traded by the defendant or as protection for the object of the dispute.

In practice, there are 2 (two) forms of confiscation of execution, including:

Seizure of execution which is a continuation of confiscation of collateral is a confiscation of collateral against cases that have permanent legal force which automatically becomes confiscation of execution;

Execution confiscation carried out after the case has permanent legal force, followed by a request for execution from the applicant for execution¹².

From these provisions, the Decision of the Execution Confiscation Order can be immediately issued by the Chief Justice after the Respondent for Execution does not heed the warning given during the incidental incident. According to the Bailiff of the Purwakarta District Court, Nandang Saprudin said that the purpose of the execution confiscation was to secure the defendant's assets so that the assets that were the object of the execution were not transferred or traded by the defendant. The point is as protection for the object of the dispute.

On April 9, 2021 the Chairperson of the Purwakarta District Court issued an Order for the Determination of Seizures of Execution as stipulated in Number 10/Pdt.G/2018/PN PWK. The execution confiscation was carried out on April 20, 2021.

After the execution confiscation process, an Execution Confiscation Minutes will

¹²Herri Swantoro, *Dilema Eksekusi Ketika Eksekusi Perdata Ada di Simpang Jalan Pembelajaran dari Pengadilan Negeri* (Jakarta: RAYYANA Komunikasiindo, 2018), 52.

¹¹Yahya Harahap, Loc. Cit, 31.

be made (Article 197 paragraph (5) HIR/Article 209 paragraph (4) RBG as stated in the Execution Seizure Minutes Number: 10/Pdt.G/2018/PN PWK. Original copy The Minutes of Seizure of Execution are at the Court and a copy of the Minutes of Seizure of Execution is given to the National Land Agency (BPN) of Purwakarta Regency, District of Execution Site and the parties, namely the Petitioner and the Respondent.

Real execution

After the execution confiscation has been carried out, the Chief Justice issues a stipulation of an execution order containing an execution order to the Registrar and the Bailiff. The stipulation of an execution order must be in written form and is imperative in nature, meaning that the head of the court is not permitted to issue a stipulation of an execution order in oral form, this is emphasized in Article 197 paragraph (1) HIR or 208 paragraph (1) RBG. Without a decree, the execution is considered an illegal act and the losing party can refuse execution¹³.

Execution of case No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019 carried out on 30 September 2021.

Notice that the real execution will be carried out must be carried out (Article 197 paragraph (5) or Article 209 paragraph (4) RBG). According to Yahya Harahap, the execution without notification to the respondent is considered an act that violates the procedures for carrying out judicial functions and is considered an unprofessional act that defames the reputation of the court.¹⁴

Execution is a forced attempt on the defendant to carry out the court's decision, based on the provisions of Article 200 paragraph (11) HIR or Article 218 paragraph (2) RBG and 1033 RV that the court may request assistance from the police or other instruments of state power during the execution. Other provisions contained in Article 15 paragraph (1) of Law No. 2 of 2002 concerning the Indonesian National Police state:

"Provide security assistance in trials and implementation of court decisions, activities

of other agencies and community activities".

Based on the Decree of the Director General of the General Courts No. 3207/DJU/SK/PS.01/10/2019 concerning Management and Accountability of Down Payment for Execution Fees, Other Costs in Execution Implementation and Confiscation Status of Execution Down Payment Fees that costs for securing, coordinating, demolition, warehouse rental, transportation, measurement by BPN etc. paid directly by the executor/plaintiff party to the related party. Based on the Decree of the Director General of the General Courts Agency No.40/DJU/SK/HM.02.3/1/2019 concerning Guidelines for Execution at the District Court in terms of execution of vacancy (real execution), the day and date of execution of vacancy is determined by the Chairman of the District Court after coordination with security forces. Therefore,

After the execution has been successfully carried out, based on the provisions of Article 197 paragraph (5) or 209 paragraph (4) RBG is ordered to the execution executor to make Minutes of the ExecutionAs stated in the Minutes of Execution of Emptying Number: 10/Pdt.G/2018/PN PWK. Whether or not the execution is valid is proven by the minutes of the event¹⁵.

Sound Provided for in 200 paragraph (11) HIR and 1033 Rv that those who must leave the immovable property are the defeated party and his family members or relatives. According to Yahya Harahap, in general, every execution of emptying is always accompanied by the release of the defendant's belongings that are directly related to the placement of these items. If the executed party removes the goods themselves from the object of the case, the execution of the emptying is complete, but if the executed party does not want to remove the goods and even refuses, the execution will continue. Prior to issuing the executed goods, first ask the executed party regarding the storage location of the executed property.¹⁶

Delay in Implementation of Real Ex-

13 Yahya Harahap, Op.Cit, 37.

14 Ibid, 45

15 Ibid, 38

16 Ibid., 47-48

Execution in Civil Judge Decisions

Based on the results of document studies in the case file of the Purwakarta District Court No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019, the panel of judges in one of their verdicts stated:

Punish Defendants I through Defendants VI to leave empty and hand them over unconditionally to the Plaintiffs and if necessary the handover is carried out by force through police assistance on the object of the case, a plot of Persil 52 land along with a building located at Jalan Kopi, RT.001, RW.004, Ciwareng Village, Babakancikao District, Purwakarta Regency in the form of:

The land where the grave of the late Alm. H. Kartim bin Saipan and the late. Hj. Inem binti Ikin, with an area of 1,770 m², which is bordered by: - To the north: Jalan Kopi; - To the east: Land owned by H. Kartim; - To the south: Land owned by H. Kartim; - West side: Land owned by Mahda Bin Suanta;

Land and building on it with an area of 1,740 m², which is bordered by: - To the north: Jalan Kopi - To the east: Land owned by H. Kartim; - To the south: Land owned by H. Kartim; - West side : Land owned by H. Kartim ;

Land and buildings on it with an area of 766 m² which are bordered by: - To the north: Land owned by H. Kartim; - East : Village road; - To the south: Land belonging to Een Marta; - West side: Land owned by H. Kartim;

Land and buildings on it with an area of 914 m² which are bordered by: - To the north: Land owned by H. Kartim; - To the east: Land owned by H. Kartim; - To the south : Land belonging to Kasen; - West side: Land owned by H. Kartim;

Land and buildings on it with an area of 821 m² which are bordered by: - To the north: Jalan Kopi; To the east: Land owned by H. Kartim; - To the south: Land owned by H. Kartim; - West side: Land Owned by H. Kartim;

Land and building on it with an area of 762 m² which is bordered by: - To the north: Jalan Kopi; - East : Village road; - To the south: Land owned by H. Kartim; - West

side: Land owned by H. Kartim;

Due to objections to the decision of the Court of First Instance, the defendants submitted an appeal to the Bandung High Court, and it was decided by the Bandung High Court on March 13 2019. Amarnya stated that he upheld the decision of the Purwakarta District Court. Furthermore, the defendants submitted an appeal to the Supreme Court, and it was decided on December 16, 2019. At the cassation level, the decision stated that they rejected the cassation request from the cassation applicants. Thus, case No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019 won by the plaintiff. However, the defendant did not voluntarily implement the decision until the plaintiff submitted a written request for execution on May 6 2020. Execution of case No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019 the real execution can only be carried out on September 30, 2021. Execution of case No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019 experienced a delay in execution for 1 year, 9 months, 14 days. The factors causing the delay in the execution of case No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019 including:

Third Party Resistance/Demonstration (Derden Verzet)

In civil procedural law, it is possible for a third party to submit a challenge or objection to the decision to confiscate execution. Resistance or objection from third parties is called *Derden Verzet*¹⁷. The provisions governing the possibility for a third party to submit a fight against the execution are listed in Article 195 paragraph (6) HIR/206 paragraph (6) RBG. According to PThe origin is that if there is resistance from a third party who argues that the goods being confiscated belong to him, then the resistance is examined and decided by the District Court which has jurisdiction over the execution of the decision.

Another provision that regulates that it is possible for a third party to submit a chal-

¹⁷Pradnyawati & I Nengah Laba, "Tinjauan Yuridis Mengenai Perlawanan Pihak Ketiga (Derden Verzet) Terhadap Putusan Verstek", *Jurnal Lingkungan & Pembangunan* Vol. 2, No. 1 (Maret 2018), 27.

lence to a court decision, namely Article 378 Rv, as the article reads as follows:

“Third parties have the right to challenge a decision that harms their rights, if they personally or their lawful representatives or the parties they represent are not summoned at a court hearing, or due to a combination of cases or interference in a case be a party.”

On September 22, 2020, a third party named Oong Saan bin Asdi filed a complaint against the execution process in case No. 10/Pdt.G/2018/PN PWK registered at the Purwakarta District Court Registrar with Register No. 30/Pdt.Bth/2020/PN PWK. In accordance with the instructions from the Chairperson of the Bandung High Court, the execution of case No. 10/Pdt.G/2018/PN PWK, the execution was postponed until the Purwakarta District Court decided the objection case.

According to Hasanudin as Head of the Purwakarta District Court, in principle nothing can postpone execution except for voluntary fulfillment or peace. Apart from that, nothing can delay the execution, be it a third party's resistance (Derden Verzet), a party's resistance (Partij Verzet) or a judicial review. The theory is like that, but because execution is the policy domain of the Head of the District Court, the Chair has the right to postpone execution, for example there is resistance from a third party and the reason for the resistance is reasonable, it is feared that it will be granted, then the execution can be postponed. According to him, to postpone the execution because of the objection, it is necessary to see and assess whether the objection is rational or not. If it is considered rational, it is postponed until the first level decision.¹⁸

The provisions of Article 380 Rv/381 Rv which provide for the possibility of postponed execution due to a third party's resistance until the said resistance case is decided if there are reasons for the delay. In accordance with the provisions of Article 207 paragraph (3) HIR or 227 paragraph (1) RBG, in principle, resistance or objection does not postpone execution unless the Chief Justice issues a

temporary suspension order until the case of resistance or objection is decided.

In Law no. 48 of 2009 concerning Judicial Power in Articles 54 and 55 regulates execution. Article 54 paragraph (2) states that the implementation of court decisions in civil cases is carried out by clerks and bailiffs led by the Head of the District Court.

There are no statutory provisions that regulate and determine exceptions (exceptional) for postponement of execution. The determination of the exception is solely based on the authority of the Head of the District Court who has the authority to carry out the execution.

According to Yahya Harahap, the condition for resistance/rebuttal to be considered to delay the execution is that the resistance/rebuttal must be submitted before the execution is carried out. If the execution has been carried out, the objection to the execution is carried out through a lawsuit¹⁹.

Not all Derden Verzet (third party resistance) can be grounds for postponing execution so Derden Verzet cannot be applied in general. Article 195 paragraph (6) HIR does not mention the possibility of Derden Verzet delaying the execution, but the article also does not provide a prohibition against delaying execution on casuistic grounds for Derden Verzet. The article prohibits using Derden Verzet as a reason for delaying execution in general.²⁰

Referring to the theory of postponement of execution, delays in execution can be faced casuistically and exceptionally. The casuistic delay of execution means that there is no general standard that can delay an execution. A reason for delay can be made in one case but may not necessarily be treated in another case. A reason may not be the same as the assessment and application as a result, the reason does not apply generally to all postponement of execution²¹. For example, in the case regarding case No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019 was filed for rebuttal by a third party. So casuistically the objection can be used as a reason to postpone the

¹⁹ Yahya Harahap, *Ibid.*, 314.

²⁰ *Ibid.*, 316.

²¹ *Ibid.*, 308.

¹⁸ Hasanudin, SH, MH, Interview, 12 April 2022, 08.30 to 09.46

execution. It would be more appropriate to postpone the execution, because if the execution continues and then the result of the objection case is won by the party filing the objection, it will cause new problems. The postponement of execution is exceptional, meaning that the granting of a postponement of execution is an act of getting rid of general provisions.

Based on the Postponement of Execution Theory, there are 2 (two) action criteria that must be taken by the Head of the District Court regarding resistance to execution, including: If the argument for resistance is successfully proven by the opponent, the execution may be postponed; If the argument for resistance is not proven by the opponent then the execution will still be carried out²².

Therefore, the proper application in dealing with cases of resistance/rebuttal is to link it with the process of examining cases of resistance/rebuttal until the case of resistance/rebuttal is decided by the District Court. Before a case of resistance/rebuttal is decided by the District Court, it is better for the Head of the District Court to wait until the case is decided by the District Court. Yahya Harahap said that there were several reasons for the postponement of the resistance/rebuttal case until it was decided by the District Court, namely: First, to maintain the contradiction between the execution and the resistance decision. Second, foster consistent action between cases of resistance and execution.

Referring to the theory of postponement of execution that legal services are wise in delaying execution if resistance is filed, namely by examining the counterclaim beforehand. Executions are left temporarily in a state of a quo status. If the date of execution has not been determined, then the execution is postponed until the case against the resistance is decided by the District Court. Furthermore, if the resistance has been decided by the Panel of Judges of the District Court, the Head of the Court can take a further stance in accordance with the results of the resistance decision. If the resistance is granted, the Chief Justice can issue a stipulation on the postponement of execution. Conversely, if

²² Ibid., 317-318.

the resistance is rejected then the execution is carried out.²³

Thus, it can be concluded that the fate of the postponement depends on the outcome of the resistance decision. If the resistance is granted, the execution will still be postponed until the decision of the resistance has permanent legal force. But if the resistance is rejected then the execution is carried out. Therefore, in the writer's opinion, the attitude of the Head of the Purwakarta District Court postponed the execution of case No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019 due to objection case No. 30/pdt.bth/PN PWK until the objection case is decided by the Purwakarta District Court is appropriate and in accordance with Article 207 paragraph (3) HIR/227 paragraph (1) RBG and the provisions in Article 380 Rv and 381 Rv.

COVID-19 pandemic

On 30 January 2020, the World Health Organization (WHO) declared COVID-19 a "Public Health Emergency of International Concern" or a Public Health Emergency of International Concern.²⁴

Related to this, the Indonesian government issued several regulations related to handling health problems, namely by issuing Law Number 6 of 2018 concerning Health Quarantine (UU 6/2018). The derivative of this Law is Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB) in the Context of Accelerating the Handling of COVID-19 (PP 21/2020). PSBB measures include limiting residents' activities such as limiting the movement of people and/or goods which will cause the spread of COVID-19.

Based on Purwakarta Regent Circular Letter No: 443.1/2316/Huk Regarding Enforcement of Restrictions on Community Activities (PPKM) Level 4 Corona Virus Disease 2019 in Purwakarta Regency on 26 July 2021, in number 2 (two) it is stated:

"Any form of activity/activities that can

²³ Ibid., 436.

²⁴ Di Wu, Tiantian Wu, Qun Liu & Zhicong Yang, "The SARS-CoV-2 outbreak: What we Know". International Journal of Infectious Diseases, No. 94 (March 2020),44.

cause crowds in every area of Purwakarta Regency is prohibited.”

Regarding the postponement of the implementation of the execution of civil cases due to the COVID-19 Pandemic, if seen based on the Circular Letter of the Secretary of the Supreme Court of the Republic of Indonesia Number 7 of 2021 concerning the Implementation of the Implementation of Emergency Restrictions on Community Activities (PPKM) within the Supreme Court and Judiciary Bodies Under it in the Java Region and Bali on July 5 2021 in point 3 (three) stated as follows:

“Postponing all activities that are gathering people in certain locations and traveling out of town, both official and non-service during the Emergency PPKM period, except for those that are urgent by obtaining prior permission from the work unit leader.”

Regarding the basis for consideration, the Chief Justice decided to postpone the execution on the grounds of the COVID-19 pandemic. According to Hasanudin as Head of the Purwakarta District Court that in general civil executions involve many parties, especially executions of emptying or demolition. If the execution continues, it will cause a crowd of people with a high potential for transmission of COVID-19 at the execution site. So, for health reasons and the Government’s policy not to carry out activities or activities that create crowds and the Physical Distancing policy, the COVID-19 Pandemic can be used as an excuse to postpone the execution. Therefore, in the writer’s opinion, the attitude of the Head of the Purwakarta District Court was appropriate and wise to postpone the execution of case No. 10/Pdt.

Furthermore, the source said that the postponement of the execution was the policy of the Chairman of the District Court. When talking about policy, there is a subjective side that cannot be assessed by anyone because this is the policy of the Head of the District Court. According to the Chairperson of the Court, it was postponed due to COVID-19. This was true or the Head of the District Court continued to carry out the execution even though there was a COVID-19

pandemic. Juridically, everything is correct because the execution is the authority of the Chairman of the District Court which has been granted by law.

If you have a view on the theory of justice that justice is giving rights to those who are entitled to those rights. The meaning of justice is expanded again by placing something in its place or in other words fair is the same as wise, namely a wise act.²⁵ John Rawls said that justice in a broad sense, namely lawfulness, is not only compliance with the law, but also the willingness to advance or encourage the common good which is considered a constitutive goal of law.²⁶ So, according to the author’s opinion, the postponement of the execution carried out by the Chairperson of the District Court in the execution of case No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019 due to the reasons the COVID-19 pandemic was appropriate and wise.

Justice must be upheld by law enforcement as fundamental to the application of the law²⁷. In John Rawls’s principle of justice, namely the Principle of greatest equal liberty (the principle of equal liberty as much as possible). In this principle there is the right to maintain private property²⁸. Thus, the plaintiff has the right to demand the fulfillment of the court’s decision through the execution of the object of the dispute, namely a plot of Persil 52 land and a building located at Jalan 98 Kopi, RT.001, RW.004, Ciwareng Village, Babakancikao District, Purwakarta Regency.

Aristotle’s Theory of Justice that the purpose of law is solely to bring about justice. Justice here is *iustitia est constans et perpetua voluntas ius suum cuique tribuere* which means giving to everyone what is their share or

25 Rahman Syamsuddin, “Keadilan Bermartabat Pada Upaya Hukum Luar Biasa Peninjauan Kembali Dalam Sistem Peradilan Pidana Di Indonesia” (Dissertation of Doctoral Program, Hasanuddin University Makassar, 2018), 22.

26 David J Riesbeck, “Aristotle and the Scope of Justice”. *Journal of Ancient Philosophy* 15, No.2 (2016), 62.

27 Dian Latifiani et al, *Reconstruction Of E-Court Legal Culture In Civil Law Enforcement*, *Journal of Indonesian Legal Studies*, Vol 7 No, 2 P. 415

28 Damanhuri Fattah, Damanhuri Fattah, “Teori Keadilan Menurut John Rawls”. *Jurnal TAPIS* 9, No.2 (Juli-Desember 2013), 35.

rights.²⁹In this case it is the plaintiff's right to a plot of land Persil 52 and a building located at Jalan Kopi, RT.001, RW.004, Ciwareng Village, Babakancikao District, Purwakarta Regency. The attitude of the defendants who were not willing to carry out court decisions that had permanent legal force even put up physical resistance during the execution of case No. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019 was carried out reflecting the attitude of the defendants who were disobedient and subject to the law.

Referring to Plato's and Aristotle's theory of justice that "justice means goodness as well as willingness to obey laws." which means justice is kindness and willingness to obey the law.³⁰According to Aristotle, in general, a just person is someone who obeys and obeys the law (law abiding & fair). Conversely, it is said that people are unfair, namely someone who does not comply with the law (unlawful & lawless or unfair). Because the act of obeying and submitting to the law is fair.³¹In other words, the execution was carried out in order to have meaning for justice. If the execution is difficult to carry out, then justice will also be disrupted. Therefore, the head of the judge's decision reads "For the sake of Justice Based on Belief in the One and Only God". The head of the decision defines coercion that must be carried out for the sake of justice based on Belief in the One and Only God.³²

D. Conclusion

Based on the results of research and discussion in the previous chapter. Then a conclusion can be drawn. The postponement of the execution was due to the third party's resistance/denial (Derden Verzet) and the reasons for the Covid-19 pandemic

²⁹ Suprima Ollifca Pratisis, "Implementasi Teori Keadilan Komutatif Terhadap Pelaku Pemerkosaan Menurut Pasal 285 KUHP", *Lex et Societatis* II, No.5 (Juni 2014), 56.

³⁰ Afifeh Hamed, "The Concept of Justice In Greek Philosophy (Plato and Aristotle)". *Mediterranean Journal of Social Sciences* 5, No. 27 (Desember 2014), 1163.

³¹ Amran Suadi, 2014, *Sistem Pengawasan Badan Peradilan di Indonesia*, Depok: Rajawali Pers, hlm. 29.

³² Herri Swantoro, Loc. Cit, p. 2.

against case no. 10/Pdt.G/2018/PN PWK Jo 93/Pdt/2019/PT BDG Jo 3532 K/Pdt/2019 is in accordance as stipulated in the applicable Laws and Regulations. In principle, there is no absolute reason to delay execution. Even if there is resistance, the execution is not absolutely postponed (Article 207 paragraph (3) HIR/227 paragraph (1) RBG). However, in practice, because it is feared that the third objection will be granted, if there is a lawsuit against the execution, The head of the district court will postpone the execution until the objection case is decided by the district court.

Meanwhile, due to health reasons and an appeal from the government not to create crowds and the existence of a Physical Distancing policy, the COVID-19 pandemic is the basis for considering the COVID-19 pandemic as the cause of the delay in the real execution.

The authority to carry out the execution of civil case decisions rests with the Head of the District Court who first renders the decision. Execution is the authority of the Head of the District Court in the form of a policy, therefore the execution of civil cases is the responsibility of the Head of the District Court. Thus, the postponement of the execution of civil cases is the policy of the Chairman of the District Court which has been granted by law.

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