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Supervision and Authority of Real Execution of Civil Cases

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Abstract: *This research stems from the many cases of disputes that have been legally binding but the rights have not been fulfilled due to constraints in real execution. A number of cases also require an in-depth understanding of the authority possessed by the Chairman of the District Court. The research method used combines normative and empirical approaches. The research focused on the High Court in the South Sulawesi region. The research subjects included all judges, including the Chief Justice, Registrar, and Substitute Registrar. The results of the study indicate that the implementation of internal supervision of the Chief Justice of the District Court is still ineffective in the implementation of civil case decisions that have permanent legal force. It is necessary to increase effective supervision over the implementation of decisions by the Chief of the District Court and a firm attitude is needed from the High Court and the Supreme Court as higher institutions in stages. In addition, opening up space for justice seekers to consider making extraordinary legal efforts, a better understanding of the types of decisions that can be executed, and solutions to legal obstacles that may arise in the execution process such as the establishment of regulations that can be used as legal instruments for resolving certain relatively complicated decisions, for the sake of justice, expediency and legal certainty in accordance with the value of justice for humanity.*
Keywords: Supervision; Execution; Autority

1. Introduction

In social life, civil disputes between individuals often occur, even between individuals encouraging them to submit claims of rights (lawsuits) to the court. According to Sudikno Mertokusumo, he emphasized that this kind of lawsuit aims to obtain legal certainty and avoid vigilantism (eigenrichting). In accordance with Article 10 Paragraph 1 of Law Number 48 of 2009 concerning Judicial Power, the court is prohibited from refusing to examine and hear claims of rights filed by parties who feel aggrieved on the pretext of the absence of law or legal uncertainty, but is obliged to examine and hear it. To enforce material civil law in rights claims, legal regulations such as the HIR, RBg, and Rv are required as part of civil procedural law. Article 1 Paragraph 1 of Law No. 48/2009 on Judicial Power emphasizes that judicial power is to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Judges, as organizers of judicial power in deciding cases with the principle of justice are responsible to God Almighty, as stated in Article 2 Paragraph (1) of Law Number 48 of 2009. In every civil case, the submission of rights claims to the court follows the applicable civil procedural law system, such as HIR, RBg, and Rv, in accordance

with the provisions of the Transitional Rules of Article 1 of the 1945 Constitution of the Republic of Indonesia which regulates the continuity of civil procedure rules. Translated with DeepL.com (free version)

In accordance with the law of civil procedure in court, it is used when there is a dispute or dispute between the parties where those in dispute take the judicial institution to end their dispute. This can be seen by the parties filing a claim for rights (lawsuit) to the court hoping that their claim will lead to a court decision that has permanent legal force. The decision will have permanent legal force if there is no appeal against the decision of the court of first instance, a verdict of verstek which is not followed by resistance (verzet), a peace decision, an appeal decision which is not followed by cassation, and a cassation decision. A decision that has permanent legal force must be executed if the winning party (execution applicant) wants to regain his rights, because without execution his rights will not be obtained or owned again. However, even though the verdict that has been handed down by the judge has permanent legal force, it cannot necessarily be executed immediately, but at least it must fulfill the legal principles of execution which include:

- The verdict has permanent legal force (BHT);
- The verdict is not implemented voluntarily by the losing party;
- The verdict must be condemnatory in nature;
- Execution must be in accordance with the verdict, and
- Execution by order of the President of the Court.

If all the elements of the legal principles of execution are fulfilled, then an execution can be carried out, which of course begins with a request to execute.

Therefore, in civil cases execution is an obligation that must still be carried out by the court as stated in Article 54 Paragraph (2) of Law Number 48 of 2009 concerning Judicial Power that "The implementation of court decisions in civil cases is carried out by clerks and bailiffs led by the chairman of the court", which of course its implementation is inseparable from the procedural order contained in the Herziene Inlandsch Reglement (HIR) and Rechtsreglement voor de Buitengewesten (R.Bg) or Reglement for overseas areas. The provisions relating to execution in general against court decisions are absolutely only given to the judicial institution of the first instance, namely the district court, as stipulated in Article 195 to Article 225 HIR, or Article 206 R.Bg to Article 259 R.Bg. In addition, execution is

also regulated in Article 1033 Reglement op de Burgerlijke (Rv or BRv) which specifically regulates real execution, and Articles 54, 55 of Law Number 48 of 2009 concerning Judicial Power regarding the execution of court decisions.

Forced execution is carried out solely to realize the contents of the decision, because the parties or one of the parties to the court decision are not willing to obey it voluntarily. Nevertheless, in the implementation of court decisions or carrying out executions, attention must still be paid to and must not ignore Article 54 Paragraph (3) of Law Number 48 of 2009 concerning Judicial Power, which states that: "Court decisions are carried out with due regard to human values and justice".

A valid court decision should provide protection for the rights of the respondent in execution, however in South Sulawesi Province, execution often experiences obstacles even though the court decision is legally binding and a request for execution has been submitted. Data from several District Courts show that most requests for execution cannot be executed due to various obstacles. The President of the District Court plays an important role in overseeing the execution to ensure compliance with the order in the judgment. Although there are legal constructs governing the authority to execute, such as the role of the Chief Justice of the District Court and the issuance of the execution order in the writ of execution, the rights of the executed are often ignored and not protected during the execution due to the lack of effective supervision. With further research, it is hoped that factors that impede the supervision of fair execution of civil judgments can be identified.

2. Observation Method

This research, using empirical and normative types of legal research, specific research locations as a source of relevant data. Therefore, the focus of the research was directed at the High Court operating in the South Sulawesi Province. The decision to select this region was taken in order to collect information and data related to issues related to the execution of court decisions, which became the core of the main focus of the research. Thus, the High Courts in this region became central in the process of collecting data related to the execution of court decisions in South Sulawesi Province.

The research will involve in-depth observation and analysis of the practice of execution of court decisions in the region, providing a comprehensive picture of the dynamics and challenges in the implementation of the execution of court decisions at that level. The data

collection technique used in this research is a random sampling system, while the data collection methods used are questionnaires, interviews, and document studies. The population and sample were 40 respondents involved in the implementation of legally binding decisions in civil cases, namely: South Sulawesi high court 8 respondents, Makassar court 8 respondents, Sungguminasa district court 8 respondents, Pare-Pare district court respondents, Palopo district court 8 respondents.

3. Discussion and Results

a. Authority to Order Execution

If the time limit for warning (aanmaning) has passed and the losing party in the trial refuses to attend the summons and does not carry out the warning without a valid reason, the head of the District Court will issue an execution order in the form of a stipulation. The authority to execute court decisions is only given to the court institution of first instance, namely the District Court. This is in accordance with the provisions contained in Article 195 Paragraph (1) HIR or Article 206 Paragraph 1 R.Bg.

Article 195 Paragraph (1) HIR stipulates that the execution of judgments by the court in cases first heard by the district court shall be carried out by order and under the supervision of the chairman of the district court which initially heard the case, in accordance with the procedures described in the following articles. Similarly, Article 206 Paragraph (1) R.Bg stipulates that the execution of judgments in cases tried at first instance by the District Court shall be carried out by order and under the supervision of the chairman, in accordance with the procedures outlined in subsequent articles.

The essence of the authority to execute rests with the president of the District Court, resulting in the High Court or Supreme Court losing the authority to carry out executions. Although the judgment to be executed originates from the High Court or Supreme Court, the execution is still under the supervision of the District Court. The execution is carried out based on a determination letter from the chairman of the District Court ordering the court clerk or his deputy, with the assistance of two witnesses and may involve state force if necessary. According to Article 197 Paragraph (7) HIR or Article 210 R.Bg, the witnesses must be Indonesian residents who are at least 21 years old, known, and trustworthy. The clerk or person appointed by the president of the court to carry out the execution must notify the losing party and the local officials. The execution process begins with the seizure of the

losing party's goods, especially movable goods. If the value of these goods is insufficient to satisfy the judgment, the seizure will proceed on fixed goods until the amount required in the judgment is satisfied. It is important to note that the execution order must be in writing for the purpose of providing legal certainty and clear enforcement. With this order, the clerk or bailiff has a detailed guide to carry out the execution appropriately and responsibly.

To see an overview of the execution can be seen in the table below :

Table 1. Development of Real Execution Requests and Their Implementation

No	Years	The Applicant	Implemented	Percentage(%)
1	2013	23	1	4,34
2	2014	15	2	13,33
3	2015	27	4	14,81
4	2016	55	9	126,36
Total		**120**	**16**	**13,33**

Source : District Court of Makassar, Years 2017

Table 4 shows the development of execution requests and their realization from 2013 to 2016. The data shows that out of a total of 120 requests for execution during this period, only 16 requests (13.33%) were successfully executed by the district courts. In year-by-year breakdown, in 2013 out of 23 requests for execution, only 1 (4.34%) was fulfilled. In 2014, out of 15 requests, only 2 (13.33%) were realized. In 2015, out of 27 requests, only 4 (14.81%) were executed. Meanwhile, in 2016, out of 55 requests for execution, only 9 (16.36%) were successfully executed by the district court. This fact is very concerning because although the District Court is supposed to be the last place to obtain justice and legal certainty, in reality it is unable to meet the expectations of justice seekers. Many cases that have permanent legal force cannot be executed, resulting in a lack of legal certainty in case settlement.

Empirical facts show that the lack of external oversight institutions, such as the Ombudsman, contributes to the large number of unrealized execution requests. Courts often do not execute requests from winning parties, leading to a backlog of requests without follow-up. A writ of execution facilitates the execution executor in the field to understand the boundaries of the execution, allowing the President of the Court to supervise the execution in detail.

The table below illustrates the following execution commands :

Table 2. Execution Time

No	Category	Frequency	Percentage (%)
1.	Since the summons is not fulfilled by the losing party	30	75
2.	The losing party fails to heed the warning within the time set by the President of the Court.	9	22,50
3.	No Answer/Doubtful	1	2,50
J u m l a h		**40**	**100**

Source: Primary data after processing, Year 2017.

Based on Table 5, of the 40 respondents interviewed, 75% stated that the execution of a court decision begins when the losing party does not comply with the summons. Meanwhile, 22.50% stated that execution occurs when the losing party does not heed the warning issued by the President of the Court. Only 2.50% were unsure of their answer. The above facts illustrate that execution is generally carried out due to the absence of the losing party, which reflects their disappointment with the court's decision.

This non-compliance arises because the losing party feels that the court's decision is unfair and unobjective, resulting in resistance to the warning from the President of the Court. Even if there is resistance from the losing party, this will not suspend execution unless there is an order from the President of the Court.

If the challenge is accepted, execution is suspended; if it is rejected, execution proceeds based on the letter of determination. Interviews with bailiffs revealed differences of opinion among legal practitioners on when a writ of execution should be issued by the President of the Court. Some argued that the writ of execution should be issued immediately after the summons has not been complied with by the losing party, while others argued that it should be done after a reapplication for execution has been filed. The application for execution is

considered important to complete the administration of the execution and provide certainty regarding the execution itself. Some losing parties, although unwilling to execute the judgment after a warning, are willing to execute it voluntarily, so execution is not always necessary. The execution process begins after the appointment of a clerk or bailiff to execute the execution order.

Notice of execution to the losing party and carrying out physical execution on the appointed day. Interviews with the civil departments of several District Courts show that the most common type of execution is real execution (vacating). This can be the vacating of land or buildings based on the claim of land ownership in the lawsuit. The losing party is expected to leave and vacate the property. Otherwise, forced execution can be ordered, even with the help of state forces (police), if needed.

b. Authority to Lead the Execution

Article 195 Paragraph (1) HIR or Article 206 Paragraph (1) R.Bg authorizes the President of the District Court to execute court decisions. The President of the District Court is the person who leads the execution based on the rules set out in the relevant articles.

In this regard, the President of the District Court has two main powers: first, to order execution, and second, to supervise its execution. Both of these powers are formally vested in the President of the District Court.

The authority granted to the District Court, in accordance with Article 195 Paragraph (1) or Article 206 Paragraph (1) R.Bg, is also related to Article 197 Paragraph (1) or Article 208 R.Bg which regulates confiscation. This is part of the responsibility of the President of the District Court in carrying out the execution. Thus, the legal structure between these authorities in the execution process can be summarized briefly. so that the legal construction of the authority between the two articles in carrying out the execution can be briefly concluded that :

1. The President of the District Court shall order and preside over the execution;
2. The authority to order and preside over the execution vested in the President of the District Court is ex officio;
3. The execution order is issued by the Chief Justice of the District Court in the form of a determination letter (beschikking);

4. Those who are ordered to carry out the execution are clerks or Bailiffs of the District Court.

Therefore, before carrying out the execution, the President of the District Court first issues a written order to the clerk or bailiff to carry out the execution. The execution is then carried out under the direct supervision and leadership of the President of the District Court. Furthermore, the table below shows how execution orders are organized and executed under the supervision of the President of the District Court in executing court decisions.

Table 3. President of the District Court Presiding over the Execution

No	Category	Frequency	Percentage(%)
1.	Always lead the execution	-	-
2.	Sometimes Leads the Execution	6	15
3.	Never Lead	31	77,50
4.	Course of Execution No Answer / Undecided	3	7,50
Total		**40**	**100**

The results of the survey of 40 respondents showed that the majority of them, 77.50%, stated that the President of the District Court rarely led the execution process.

According to Arsyid Zakaria, an advocate, although executions are carried out by clerks or bailiffs, the responsibility for leading the execution process remains with the President of the District Court. This underlines the importance of the role of the District Court President in issuing execution orders with clear provisions and ensuring that executions are carried out in accordance with court decisions. Execution is seen as the final step to restore one's property rights in accordance with the court's decision, but many District Courts face difficulties in its implementation, which can affect the image of the District Court as a law enforcement institution. The losing party is often reluctant to surrender rights in accordance with the court's decision, forcing the applicant for execution to request forced enforcement to the

President of the District Court. The execution process is often hampered by various problems, requiring the President of the District Court to possess traits such as courage, thoroughness, high integrity, and in-depth understanding of the law to ensure a smooth execution process.

Success in leading an execution to vacate is the hope of the justice-seeking community. If achieved, justice seekers will feel confident and believe that the litigation process in the District Court will be beneficial because their rights that are unlawfully controlled by other parties can be returned. This trust can increase the honor of the judiciary and the prestige of the District Court, which is often under scrutiny. However, in practice, there are sometimes obstacles when there is a change in the President of the District Court. There are cases where the new President argues that he or she is new to the court, while the problem of execution occurred during the era of the previous President. In practice, execution is often arranged by the clerks and bailiffs when there is a request for execution from a litigant. The President of the District Court only signs the execution order that has been prepared by them without being involved in the execution process, even though the authority to order and lead the execution lies with the President of the District Court. Although in practice the President of the Court does not directly lead the execution, the administrative responsibility related to the execution procedure remains with the President of the District Court.The function of the ex officio authority of the President of the District Court to order and lead the execution, is not only limited to the issuance of a decree ordering the execution, but the ex officio function includes the issuance of a decree ordering the execution.

a. Commencement and action of executoriale beslag;

b. The conduct of the auction, including all processes and procedures required in the auction procedure;

c. The act of vacating and delivering the goods auctioned to the auction buyer; or

d. Delivery and possession of the executed goods in real execution The table below illustrates the suspension of execution order as follows:

Table: 4 Suspension of Execution

No	Category	Frequency	Percentage(%)

1.	Always Suspend Execution	-	-
2.	Sometimes Suspending Execution	38	95
3.	Never Suspend Execution	2	5
4.	No Answer/Doubtful	-	-
Total		**40**	**100**

Source: Primary data after processing, year 2017.

Based on the data in Table 4, the majority of respondents (95%) stated that the President of the District Court sometimes postponed executions, while 5% of respondents stated that the President of the District Court never postponed executions. However, there were no respondents who stated that the President of the District Court always postponed the execution. The Chief Justice of the District Court who sometimes postpones execution can be detrimental to the execution applicant, which in turn causes the suspension of execution to increase, resulting in obstructed execution.

The reinforced process of delaying the execution of legal decisions has resulted in a lack of oversight of its implementation, mainly due to the absence of monitoring institutions that check on the status of executions. As an example of a case at that time, the execution of land in Bulogading (Somba Opu) Makassar, the execution was still delayed due to several factors, including the absence of the applicant in court, resistance from the executed party, and financial constraints. Failure to execute such cases raises concerns of possible violence from frustrated justice seekers. In addition, some legal decisions that are declaratory in nature and do not comply with the condemnatory principle of execution are often difficult to execute and present the risk of complex legal proceedings, which can even involve violence from opposing parties to thwart execution.

4. Conclusions and Suggestions

The process of executing court decisions that have permanent legal force often experiences obstacles and obstacles in South Sulawesi Province. There are several causal factors that occur in the field, namely; the applicant does not come to court, there is resistance from the executed party, the applicant does not have funds, and the lack of a firm attitude and direct involvement of the Chief of the District Court in leading the execution which ultimately results in the suspension of execution increasing from time to time. The absence of effective supervision over the execution of judgments, especially by the President of the District Court, is one of the main factors behind the protracted execution process.

Other obstacles in the execution process include legal issues related to the type of declaratory judgment, which is often incompatible with the principle of condemnatory execution. These factors cause difficulties in implementing court decisions in the field, triggering delays in execution that cannot be ignored. Delays in execution and obstacles in the process have a negative impact on public confidence in the judiciary, which in turn reduces the image and authority of the District Court.

An increase in the number of stays of execution may also trigger vigilante actions by aggrieved parties, which may jeopardize security and legal order. Therefore, measures are needed to improve the effectiveness of the execution process, including increased effective supervision of the execution of decisions by the Chief Justice of the District Court as well as a firm stance from the High Court and Supreme Court as higher institutions in stages. In addition, opening up space for justice seekers to consider making extraordinary legal efforts, better understanding of the types of decisions that can be executed, and solutive thinking towards legal obstacles that may arise in the execution process such as the establishment of regulations that can be used as legal instruments for resolving certain relatively complicated decisions, for the sake of justice, expediency and legal certainty in accordance with the value of justice for humanity. Thus, law enforcement in South Sulawesi Province can be more efficient and meet public expectations of justice provided by the judiciary.

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