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LEGAL CERTAINTY ON THE EFFECTIVE AND EFFICIENT IMPLEMENTATION OF CIVIL DECISIONS CAN GUARANTEE EASE OF DOING BUSINESS IN INDONESIA

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Abstract

The execution of civil decisions must be fast, cheap, simple, and low cost and have legal certainty. In order to realize this, it is necessary to reform the dispute resolution law in Indonesia. As a product of the judiciary as well as the crown of the head of the district court, the head of the court, a decision that has permanent legal force will be meaningless if no execution is carried out. Delinquent executions, incomplete executions or even non-performance of executions will not only affect public confidence in the court as an institution that should provide concrete justice and legal certainty for the parties to the dispute, but also guarantee legal certainty for the parties to the dispute, providing ease of doing business, investment opportunities and Indonesia's credibility in the international world.

Keywords: Execution, Civil, Doing Business

INTRODUCTION

Execution in civil procedural law is the final series of all processes of examining, adjudicating and resolving a civil dispute, although not all civil disputes require execution. Because its existence is so important, the execution or implementation of a decision must be carried out carefully and it is not permitted to leave the dictum of a decision (executio est executio juris secundum judicium), except in certain cases, the execution can be carried out differently from the initial dictum of a decision. Decisions that have permanent legal force. For example, in a decision the dictum punishes the defendant or was executed to continue the construction of a building, but after the execution was carried out, the executed was apparently not willing to do so and just kept silent.

The successful execution of effective and efficient court decisions is an integral part of the success of a case settlement process starting from case registration, trials, and decisions to the process of executing decisions. Even though there was non-compliance with the contents of the decision from the losing party, the civil procedural law has provided a procedure for executing/implementing the decision. In fact, this procedure is a forced effort with the intervention of the court so that the party punished by the decision must obey and carry out voluntarily the court decision handed down to him. However, in reality it still creates obstacles in practice.

In this case the existence and independence of the judiciary in a country has the concept of a

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rule of law as the nation's ideal, where the role of the judiciary is so important and is aligned with the position of the executive and legislative institutions. Meanwhile, the principle of a simple, fast and low-cost trial as mandated by Article 4 Paragraph (2) of Law no. 48 of 2009 concerning Judicial Power continues to be questioned by justice seekers. There are still many challenges that must be faced by the judiciary in Indonesia, especially regarding the implementation of a judicial process that is free from bribery, partiality, and other judicial mafia practices that are difficult to contain, to the challenge of improving the quality of human resources for judges who must always follow developments in problems. -contemporary legal issues.

Implementation of the execution of civil decisions ideally every judge's decision must fulfill the elements of justice, legal certainty and expediency, but in reality it is very difficult to find a judge's decision fulfilling these three elements, which in turn creates obstacles, therefore, the author is interested in studying and researching these problems. implementation of the execution of civil decisions in practice by using the theoretical approach of legal science as a knife of analysis, namely the theory of justice, the theory of legal certainty and the theory of benefits from Gustav Radbruch to answer these problems. Gustav Radbruch stated that justice is the crown of legal certainty. Justice is the soul of law. Law without justice is like a body without a soul, because the spirit of law is justice, the soul of law is justice. Legal certainty that ignores justice is not law. On the other hand, justice without law will still exist. Justice is in the heart of the people. As proof of the existence of justice in society is the provision of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. Article 5 paragraph (1) states that Judges and Constitutional Justices are obliged to explore, follow, and understand legal values and a sense of justice that lives in society. So far, law has only adhered to procedural justice, not substantial justice. In this case, procedural justice is justice that refers to the sound of the law.

Related to normative statutory regulations to find justice formally, it is also necessary to further study whether materially justice can really be felt materially for many parties or not. Procedural justice enforcers often ignore this. The enforcers of procedural justice are usually classified as positivists and do not see how society does not feel justice, in which law is actually a means of realizing justice that is not just a formality.

However, in practice the execution of court decisions is not easy to do. There are several cases that have permanent legal force (inkracht van gewijsde), but experience obstacles in carrying out the execution, especially the non-compliance of the Executed Respondent, to carry out the contents or order of the decision voluntarily, the absence of fees and the presence of physical resistance from the Execution Respondent by using mass to confront Court officials and security officers.

Therefore, as an illustration of the existence of an execution problem that occurred in the Palembang District Court which was based on the Palembang District Court Decision Number 90/Pdt.G/2011/PN.Plg dated 22 February 2012 juncto Palembang High Court Decision Number 47/PDT/2012/PT Plg dated July 19 2012, juncto Cassation Decision Number 1547 K/Pdt/2013 dated October 29 2013, juncto Judicial Review Decision Number 540 PK/Pdt/2015 dated

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December 14 2016, the applicant for execution is the legal owner of the disputed object, namely a plot of land area of 10,900 m² (ten thousand nine hundred square meters) located on Jalan Resident A. Rozak (Patal Pusr), RT.47/RW.10, Kelurahan 8 Ilir, District Ilir Timur III, Palembang City (formerly Jalan Resident A, Rozak , RT.15/RW.06 Kelurahan 8 Ilir, District Ilir Timur II, Palembang City),based on Decision of Palembang District Court Number 90/Pdt.G/2011/PN.Plg dated 22 February 2012 juncto Decision of Palembang High Court Number 47/PDT/2012/PT.Plg dated 19 July 2012, juncto Decision of Cassation Number 1547 K/Pdt/ 2013 dated 29 October 2013, juncto Decision of Judicial Review Number 540 PK/Pdt/2015 dated 14 December 2016.

After the execution process had begun and reached the Constatering stage, the district court officers conducted research on the location of the object of dispute accompanied by the Palembang City Land Agency officers and it turned out that some of the a quo execution objects had been executed in other cases based on the Decree on Execution of Vacant Number 22/08 /Pen.Pdt.G/Eks/2008/PN.Plg dated 15 August 2012 and Minutes of the Execution of the Empty Number 22/08/BA.Pdt.G/2008/Eks/PN.Plg, dated 22 October 2012 in the case between Thamrin , et al, as the Petitioner for the Execution against Makmur Abdullah, et al as the Respondent for the Execution, so that the Execution was based on the Decision of the Palembang District Court Number 90/Pdt.G/2011/PN.Plg dated 22 February 2012 in conjunction with the Decision of the Palembang High Court Number 47/PDT/2012/ PT.Plg July 19 2012,juncto Cassation Decision Number 1547 K/Pdt/2013 dated October 29, 2013, juncto Judicial Review Decision Number 540 PK/Pdt/2015 dated December 14, 2016 was only implemented against a portion of the objects in dispute, namely an area of 488 m² out of a total area of 10,900 m², with the reason that the remaining area is 10,412 m² cannot be executed because it is involved in other matters.

Continuation of the a quo execution, the executor is filing a lawsuit against the remaining objects of dispute that have not yet been executed, namely the remaining objects of dispute covering an area of 10,900 m² minus the objects that have been executed with an area of 488 m².

Not all of the factors inhibiting execution that have been stated above can be experienced by the district court, but the more requests for execution that are handled the more inhibiting factors that in the end have not created ease of doing business in Indonesia.

In cases of business competition disputes, according to Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Business Competition Law), the authority handling business competition in Indonesia is the Business Competition Supervisory Commission (KPPU). This institution is an independent institution specifically dealing with business competition on the legal basis of the Business Competition Law. This institution is a quasi-judicial institution authorized to investigate, examine and decide on business competition. Compared to the Corruption Eradication Commission (KPK), the authority of the KPPU is actually far greater, because the KPPU has the authority to try business competition cases at an early stage with decisions that provide administrative sanctions to other business actors that can guarantee the ease of doing business that has economic value in

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improving people's welfare in accordance with the objectives Indonesian legal state.

Based on the description above, the problem is what is needed in terms of legal certainty for the effective and efficient execution of civil decisions that can guarantee the ease of doing business in Indonesia?

RESEARCH METHODS

This study uses a normative legal approach in the form of positive law which can reveal legality in the form of rules, legal principles, legal aspects in laws and regulations both in relation to the denial of judge's decisions that have permanent legal force, as well as to the execution of civil decisions problem so that it cannot be executed effectively and efficiently.

This research is analytical descriptive in nature, namely a study conducted to describe the facts that occurred and then an analysis of the facts that occurred in this case examines and analyzes the authority of the court institution which is responsible for executing decisions/executing civil decisions. In an effort to be able to answer or solve the problems raised in this study, qualitative data analysis methods were used.

The form of research results is in accordance with the type of research that is diagnostic, namely legal research that observes the symptoms of a legal event, in this case the court's authority to execute quickly to support increasing the ease of doing business in Indonesia to ensure legal certainty and to support alternative solutions to various constraints in strengthening the execution system in Indonesia.

RESULTS AND DISCUSSION

Legal Certainty for the Effective and Efficient Execution of Civil Decisions Can Ensure Ease of Doing Business in Indonesia

1. Civil Execution

Definition of execution or execution of a court decision, is nothing other than forcibly carrying out a court decision with the help of public power if the losing party does not want to carry it out voluntarily. Thus, in principle, an execution institution is not needed if in a court decision the party who is defeated and punished is willing to fulfill it in good faith and carry out the contents of the decision voluntarily. The scope of application of civil execution does not only cover the field of civil law, but also in the field of bankruptcy law, Islamic law, and the implementation of national and international arbitral awards in the event that the object of execution is within the legal jurisdiction of the Republic of Indonesia. Meanwhile, if we compare the way of carrying out a civil judge's decision with how to carry out a criminal judge's decision, it can be said that the way to carry out a criminal judge's decision is rather easy, while the way to carry out a civil judge's decision is rather difficult, where the criminal execution is carried out by the prosecutor (active) , while the execution of a civil judge's decision is carried out by a clerk or bailiff on the order of the chairman of the district court (passive). In civil procedural law, the types of execution are distinguished based on the content and order of the

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court decision to be executed. Sudikno Mertokusumo believes that civil executions are classified into 4 (four) types, namely:

1. Paying an amount of money (Article 196 HIR/208 RbG);
2. carrying out an act (Article 225 HIR/259 RbG);
3. actual execution (Article 1033 Rv); And
4. parate execution (1155, 1175 Paragraph (2) BW).

Yahya Harahap has a somewhat different opinion, namely that the type of execution of carrying out an act has the same meaning as the real execution, while when it is fulfilled it is replaced by payment of a sum of money. Thus, he is of the opinion that in general, civil execution only consists of two types of execution, namely:

1. Real execution/real action; And
2. execution of payment of a sum of money.

Even though in principle that execution is the same as carrying out a forced decision (execution), there are fundamental differences between the two types of execution as mentioned above, namely:

1. In real execution, the execution is easier than executing a payment of a sum of money, where to execute a payment of a sum of money requires the stages of execution confiscation and sale of an execution auction.
2. The real execution of its application is only possible for court decisions that have obtained permanent legal force, instant decisions, provisional decisions, and deed of reconciliation made before a judge (dading). Meanwhile, the execution of payment of an amount of money is not limited only to court decisions as mentioned above, but can also be based on certain deeds based on debt-to-debt legal relations whose evidentiary and executorial powers are equated with court decisions that have permanent legal force, namely: groose deed of acknowledgment of debt, groose mortgage deed (aircraft and ships), Mortgage Certificates (SHT), and Fiduciary Collateral Certificates. Execution of the deeds as mentioned above is known as parate execution.

Principles of Civil Execution Law

The general principle (decisions must have permanent legal force) Decisions that have permanent legal force (in kracht van Gewijsde) are the main requirements that must be met so that the decision to be requested for execution can be granted (executable). Thus, a decision that can be executed is only based on the reasons that the decision has obtained permanent legal force, because the decision as stated in it contains a permanent and definite legal relationship between the parties to the case, and in a decision that has obtained legal force. The law still has a legal relationship that must be obeyed and even though it is fulfilled by the defendant,

However, in the theory of civil procedural law, especially regarding execution, there are several exceptions to the general principle of execution mentioned above. In other words, in some

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circumstances it is still possible to carry out an execution without the need to wait for a decision that has permanent legal force beforehand. Some of these exceptions are:

1. Decisions that can be implemented beforehand;
2. Implementation of provisional decisions;
3. Peace deed;
4. Execution of Grosse Mortgage Deed and Groose Deed of Debt Acknowledgment;
5. Execution of Mortgage Rights and Fiduciary Guarantees.

2. Fast Execution of Decisions

Execution of court decisions in civil cases is one of the problems that justice seekers often complain about. Execution is part of the case handling process which cannot be separated from the responsibility of the court. Despite its diversity, execution faces challenges on the ground for a variety of reasons. For example, concerns about security breaches if execution is forced.

LeIP researchers found facts about a number of issues that arose in the execution of civil case decisions. In the execution of family cases, for example, it was found that there was no mechanism capable of ensuring the payment of the maintenance of the children and/or the maintenance of the wife by the defendant. In addition, there is no mechanism that binds a third party (the institution where the applicant works) to ensure the execution of the payment of living expenses by the respondent who is absent. The factors that cause problems in the execution of civil cases are not single. Deputy Chairperson of the Bengkulu High Court, Siswandriyono, explained that there were several factors in the discussion forum, one of which was regarding issues with the regulations. For example, parate execution in Law no. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.

3. Increasing the Ease of Doing Business in Indonesia

The Ease of Doing Business Index is an index created by the World Bank to rank the ease of doing business in a country. The Indonesian government itself is committed to improving existing services and governance and continues to make improvements in each priority indicator. Indonesia continues to show its achievements in obtaining the title as a friendly country for doing business. This can be seen from Indonesia's Ease of Doing Business (EoDB) rating which continues to improve. In 2020, Indonesia's EoDB was ranked 73 in the world. The purpose of this assessment is to provide market participants with an objective basis regarding the ease of doing business in a country.

The World Bank Representative for Indonesia and Timor-Leste, Rodrigo A. Chaves, explained that the reason for Indonesia's lower ranking was because the increase in Indonesia's ease of doing business score was not as high as that of several other countries. In addition, when compared to the previous year, the increase in Indonesia's score was also quite low. If the previous year the increase in score reached 66 percent, while this year it was only 1.42 percent.

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4. Application of Execution of Decisions in Supporting Ease of Doing Business

Investors in investing, face different conveniences and obstacles when expanding their business to various countries. The difference in the ease of making investments has prompted the emergence of the ease of doing business index. The Ease of Doing Business (EoDB) Index is a ranking of the ease of doing business in a country based on several indicators and funded by the World Bank.

Based on the 2019 Doing Business report, the ranking for the ease of doing business in Indonesia is in 73 (seventy three) position. Indonesia's EoDB rating is still far from the target of being in the top 40 (forty) world rankings. There are 11 (eleven) indicators to measure the ease of doing business or also known as EoDB. The eleven indicators include starting a business, dealing with construction permits, getting electricity, registering property, getting credit, and protecting minority investors. Protecting minority investors), paying taxes (paying taxes), trading across borders, labor market regulation, enforcing contracts, and resolving insolvency cases.

The role of the judiciary in facilitating doing business, especially when business actors and/or related parties have a dispute over rights involves the court. At least, there are two parameters of ease of doing business that intersect with judicial authority, namely contract enforcement (enforcing contracts) and resolving insolvency. Judicial institutions in their contribution to increasing the ease of doing business index in this case related to contract enforcement and settlement of bankruptcy cases, can be seen by the existence of several breakthroughs including the Supreme Court (MA) playing a role in increasing ease of doing business (Easy of Doing Business) in Indonesia. As a result, the Supreme Court issued a number of policies in the form of a Decree of the Chairman of the Supreme Court (SK KMA), Supreme Court Regulations (PERMA),

In implementing the execution of decisions in supporting the ease of doing business, it is associated with the theory of justice, legal certainty and legal benefits which are the objectives of law. First, justice is a condition where the same case is treated equally. As for justice, it is closely related to conscience. Justice is not about a formal definition because it is closely related to everyday human life. This conscience has a very high position because it deals with the deepest feelings and thoughts. Regarding justice, Radbruch stated: "Summum ius summa inuiria" which means the highest justice is conscience. Radbruch has emphasized and corrected his own view, that the ideal of law is nothing other than justice.

Second,certainty which means that certainty is a legal requirement, namely that the law becomes positive in the sense that it applies with certainty. The law must be obeyed, thus the law is truly positive. This means that legal certainty is aimed at protecting the interests of each individual so that they know what actions are permissible and vice versa which actions are prohibited, so that they are protected from arbitrary actions by the government.

Third,expediency which is interpreted as a legal objective that must be aimed at something that is useful or has benefits. The law essentially aims to produce pleasure or happiness for many people. That the state and laws were created for the true benefit, namely the happiness of the

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majority of the people.

Among the legal objectives are SEMA No. 2 of 2016 concerning Increasing Efficiency and Transparency in Handling Bankruptcy Cases and Suspension of Obligations for Payment of Debt in Court. With the aim of further accelerating the process of settlement of commercial cases. This is because so far the process of settling commercial cases at the Commercial Court still takes 3-6 months. The stages and timeframe for settling commercial cases are simplified and faster, especially in the case of bankruptcy settlements. In addition, PERMA Simple Lawsuit also speeds up the process of settling civil cases and the stages are simpler. Completion of this simple lawsuit is a maximum of 25 days after it has been decided (final decision) with a single judge and the value of the object of the lawsuit is under Rp. 200 million. Like a normal civil lawsuit,

In addition, the Supreme Court also issued Supreme Court Regulation Number 2 of 2015 concerning Procedures for Simple Claims or more familiarly known as Small Claim Court, issued Supreme Court Regulation Number 2 of 2016 concerning Mediation, Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Cases Crime by Corporations, issued Supreme Court Regulation Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases, Formation of Ease of Doing Business Working Groups through Decree of the Chief Justice of the Supreme Court Number 37/KMA/SK/II/2017, issued Supreme Court Regulation Number 03 of 2017 2018 concerning Electronic Administration of Cases in Courts, developed the e-Court Application, whose features are not only e-Filing, but also e-Register, e-Payment, e-Notification and e-Summon.

Therefore, in the development of law in Indonesia, legal justice is one of the foundations that must exist in Indonesian laws and regulations. This is the reason why Indonesia recognizes primary sources of law which consist of statutory regulations which have the power to bind all Indonesian people. In addition to ensuring legal formulations that can be referred to by all Indonesian citizens, legal justice also ensures the implications for the value of legal certainty and legal benefits. Currently there are four problems that become obstacles in the implementation of execution, namely:

1. The Losing Party Does Not Want to Implement the Decision Voluntarily

According to Retnowulan Sutantio and Iskandar Oeripkartawinata, execution is a forced action by the court against a party that loses and does not want to carry out the decision voluntarily. Furthermore, M. Yahya Harahap defines execution as a legal action taken by the court against the losing party in a case, which is the follow-up rules and procedures of the case examination process. Execution is nothing other than a continuous action of the entire civil procedural legal process. R. Subekti uses the term execution or implementation of a decision and defines it as the party who is defeated does not want to comply with the decision voluntarily, so that the decision must be forced upon him with the help of general power. In line with R Subekti, Sudikno Mertokusumo also uses the term execution or implementation of a decision which means the realization of the obligations of the party concerned to fulfill the achievements stated in the decision.

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These four views explain the definition of execution which is only limited to the execution of a court decision. A broader definition of execution was put forward by Mochammad Dja'is, namely: "Execution is an attempt by the creditor to realize his rights by force because the debtor does not want to fulfill his obligations voluntarily. Thus, execution is part of the process of resolving legal disputes." This definition shows that execution is also an effort to realize rights, not just the implementation of court decisions.

Reinforcing this view, in practice courts do not only accept requests for execution of court decisions, but also decisions of quasi-judicial institutions, including: (1) arbitral awards; (2) the decision of the Consumer Dispute Settlement Agency (BPSK); (3) decisions of the Business Competition Supervisory Commission (KPPU); and (4) Information Commission (KI) decisions. The court also accepts requests for execution of documents that are equivalent to decisions with permanent legal force based on statutory regulations, including: (1) deed grosse; (2) mortgage certificate; and (3) fiduciary guarantee certificate.

The non-compliance of the executed party to carry out the contents of the decision which has permanent legal force voluntarily is due to limited legal knowledge and low legal awareness or the inability of the community to understand and apply the concept of legal awareness, so that forced efforts are required by the Court with the support of security forces. In practice, even though preparations have been made, it does not mean that the execution does not have obstacles that can delay or thwart the execution.

With regard to cultural factors, there is a tendency for the defendant to attempt to frustrate the execution in various ways, in order to defend the goods which according to him are his right. For example, by influencing residents around the location of the object of execution who sympathize with him to fight against anarchy so that the execution does not take place? It is feared that the resistance efforts carried out by the defendant executed, both legally and physically, would set a precedent which would then be followed and continued to be carried out by the community, so that it would eventually become a growing legal culture in society which in the end could undermine the order in the execution of court decisions. To solve this problem,

Therefore, the Head of the District Court as the party responsible for carrying out the execution must be able to provide legal understanding and encourage legal awareness, especially for the executed defendant when aanmaning, so that the executed respondent can comply with the verdict or at least not take any resistance or anarchistic actions when will execute. For this reason, it is also hoped that when the bailiff submits the aanmaning summons, carry it out correctly and responsibly, namely the summons must actually reach the execution respondent and encourage the execution respondent to be present at the aanmaning, so that the chairman of the court can give adequate understanding. the state regarding the importance of execution at the time of aanmaning.

2. There is no standard regulation regarding the cost of requesting safeguards

Implementation of real executions involving police assistance imposes a security fee on the applicant. Almost all heads of courts in the areas where the research object was conducted said

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that the courts had no authority to determine the cost of security. Security costs are left entirely to the police and coordinated directly between the applicant and the security forces, which are generally calculated based on the amount of food allowance in the area multiplied by the number of security personnel to be deployed. This condition is different from the practice in Italy, Germany and the Netherlands, where no security fees were charged for the involvement of the police in securing the execution, because the police were considered to carry out public service duties for the public interest.

Bearing in mind that the cost of security is highly dependent on the number of security personnel involved, it is necessary to have rules regarding the mechanism for determining the number of such personnel. With the current mechanism, the determination of personnel can be made during a coordination meeting between the court and the police. During the meeting, the court must provide an overview of the condition of the location of the object of execution, in particular regarding whether there is potential for resistance when the execution is carried out based on the results of local inspections. If necessary, the police can conduct a field inspection to ascertain the potential for resistance where the cost of this inspection is included in the security costs whose components are the same as the security costs previously described.

In order to ensure transparency and accountability in the process of determining the number of personnel and the amount of security costs, the applicant, as the party that pays the fee in advance, must be involved in the process. For this reason, it is necessary to have a regulation requiring the involvement of the applicant in a coordination meeting between the court and the respondent. After the security fee is determined, the applicant must immediately pay the fee. Regarding these payments, there needs to be strict rules regarding procedures for paying security fees. This rule must explain which party from the police has the authority to receive payments and the payment mechanism that must be made. In order for these payments to be made effectively and accountably, Payments are made by the transfer method to an account belonging to the police so that these payments can be recorded clearly and can be easily verified. This provision must be followed by the rule that the police cannot ask for any fees after payment has been made so that the security for execution is carried out with the fees already paid.

Regarding execution security costs, because these costs are costs paid to be used directly in the execution process and constitute state revenue, these costs cannot be categorized as PNBP, so the provisions in PP No. 60 of 2016 concerning Types and Tariffs of Types of Non-Tax State Revenue Applicable to the Indonesian National Police does not apply to execution security costs. Under these conditions, this payment cannot be made by transferring to the police receipt account stipulated in Article 20 PP No. 39 of 2007 concerning Management of State/Regional Money.

For this reason, the police need to have a special account that can be used to receive payments for securing execution costs. Based on the existing provisions, the ownership of this special account can be done by opening a temporary escrow account that can be used to accommodate temporary receipts and/or expenditures for certain purposes where the opening of the account must be submitted to the Head of the State Treasury Service Office (KPPN).

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Thus, the police must immediately apply for the opening of the account so that they can immediately receive payment of the execution security fee via the transfer method. If it is not possible to open this account, the Ministry of Finance must provide a special account for the police so that payment of execution costs can be made by the transfer method so that the payment is effective and accountable. If one looks closely, security costs are only incurred if police personnel are involved in the execution process. For this reason, it is hoped that the existence of this security fee will be an effective coercion so that the respondent does not put up a fight, either during the local inspection or when the execution is carried out. This is because the resistance of the respondent will make the court involve the police in carrying out the execution so that the respondent will bear greater execution costs. The greater the resistance put forward by the respondent, the higher the execution costs that must be paid because the number of police personnel involved will increase. Thus, this fee arrangement is expected to make the real execution process run smoothly.

3. Limited Number of Bailiffs

The number of bailiffs for each court varies according to class. In class IA courts, the number of bailiffs is 5 people and substitute bailiffs are 10 people. In class IB court, the number of bailiffs is 4 people and substitute bailiffs are 8 people. Whereas in class II courts the number is 3 and 6 respectively. The field study found that the current number of bailiffs, both in PN, is still limited. In the event that a summons is being carried out on the respondent, especially the summons for the respondent who is located far from the court or is in an archipelago area with limited transportation access and uncertain geographical conditions, the summons process is hampered because the number of bailiffs is limited. In fact, it was also found that courts had not had bailiffs for years, so that the function of bailiffs was carried out by clerks. This limitation is also vulnerable to making summons unable to be carried out in accordance with statutory provisions, namely no later than 3 working days.

Considering the vast territory of Indonesia with various geographical conditions, to ensure the appropriate number of bailiffs is available as needed, the execution practice in Germany can be followed as an example. In Germany, the number of enforcement officers is adjusted to the number of sub-districts, so that there is no sub-district that does not have a bailiff and the jurisdiction of the enforcement officer also only covers one sub-district where he is assigned.

If this practice is adapted to Indonesia, then the number of bailiffs and substitute bailiffs that must be available in each court is at least equal to the number of districts in the court's jurisdiction. This arrangement can also be accompanied by the division of responsibilities for bailiffs and substitute bailiffs in each district. If there is a sub-district where at a certain time there is no application for execution, then the bailiff in the sub-district can be seconded to another sub-district in the same court area where the number of requests for execution is high or high. Vice versa. In this case, the court must use statistical data on requests for execution that are submitted, so that it can be seen clearly which districts have high or low levels of requests for execution.

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4. There are no regulations governing the amicable execution by the parties outside the court

In addition to the aanmaning trial, the parties can also agree on peace outside the court. However, the field study found that there were parties who reached peace outside the court after aanmaning who did not report the settlement to court. This causes it is unclear whether the execution will still be carried out after the aanmaning period ends. The execution request will remain recorded in the execution register because the court does not have the authority to cross out the execution request if the applicant does not report on the progress of the execution within a certain period, such as the authority to cross out a lawsuit from the case register if the plaintiff is not present at the first hearing after being summoned legally and properly. , or for not paying additional down payment after 30 days. This is certainly detrimental to the court because it is considered to have an execution burden that has not been carried out.

Courts in Italy, Germany and the Netherlands do not specifically regulate this matter. However, practice in Italy states that the respondent can stop the execution confiscation by paying an amount of money that must be paid to the applicant, either as settlement, or as a guarantee, through court officials, so that the court will definitely know if the respondent has carried out the execution order.

In this regard, there needs to be a strict regulation requiring applicants to provide information on the implementation of the post aanmaning execution, including the consequences of an amicable settlement outside the court, within a certain period of time, for example 3 months. If the applicant does not provide information within that period, then the request for execution is declared void and the court has the authority to cross out the request for execution from the execution register. If the petitioner wishes to continue the execution, then he must submit a new application for execution and the execution process starts from the beginning. This is to encourage the parties to report to the court regarding any out-of-court settlement, including its developments.

CONCLUSION

In principle Legal certainty regarding the implementation of effective and efficient execution of civil decisions can guarantee ease of doing business in Indonesia requires legal renewal related to execution. As a product of the judiciary as well as the crown of the head of the court, a decision that has legal force will still be meaningless if execution is not carried out. Delinquent executions, incomplete executions or even non-execution will not only affect public confidence in the courts as an institution that should provide concrete justice and legal certainty for the parties to the dispute, but also on the ease of doing business, investment opportunities and Indonesia's credibility in the world. International world. The state through every branch of its power jointly reforms civil procedural law and other regulations to support an effective and efficient civil decision execution system. Optimizing the role of institutions outside the court to support the implementation of the maximum execution of civil decisions Increasing the capacity and quality of bailiffs to suit the needs in the field, thereby ensuring legal certainty and ease of doing business in Indonesia.

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