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LEGAL CERTAINTY FOR THE EFFECTIVE AND EFFICIENT EXECUTION OF CIVIL JUDGMENTS CAN ENSURE THE EASE OF DOING BUSINESS IN INDONESIA

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Abstract

The execution of civil judgments must be fast, cheap, simple, low cost and legal certainty. To realize this, updating the dispute resolution law in Indonesia is necessary. As a product of the judiciary and the crown of the chief justice of the district court, the chief justice of a judgment with the power of law will still be meaningless if the execution is not carried out. Execution arrears, non-completion of execution or even non-execution will not only affect public confidence in the court as an institution that properly provides Concrete justice and legal certainty for the parties to the dispute but also ensuring legal certainty for the parties to the dispute, providing convenience strive, investment opportunities and credibility of Indonesia in the international world.

Keywords: Execution, Civil, Doing Business

INTRODUCTION

Execution in civil procedural law is the final series of examining, adjudicating, and resolving a civil dispute, although not all civil disputes require execution. Because of its existence which is so important, the execution or execution of a judgment must be carried out carefully. It is not allowed to go out of the dictum of a judgment (executio est executio juris secundum judicium), except in certain cases, executions may be carried out in contrast to the initial dictum of a judgment that has the force of law. For example, in a judgment whose dictum punishes the defendant or executed to continue the construction of a building, but after execution, the executed turns out to be unwilling to do so and just keeps silent.

The successful execution of effective and efficient Court decisions is an integral part of the success of a case resolution system process starting from case registration, trial, and Verdict up to the execution process of Putusan.

Although there is non-compliance with the content of the judgment of the losing party, the civil procedural law has provided for the procedure for execution/execution of the judgment. This procedure is a coercive attempt by court intervention so that those convicted by the judgment must obey and voluntarily implement the court decision that was dropped him. [1]But in reality it still poses obstacles in practice.

In this case, the existence and independence of judicial institutions in a country has the concept of the rule of law as the ideal of the nation, where the role of the judiciary is so important and aligned with the position of executive and legislative institutions. Meanwhile, the principles of simple justice, speed, and light costs as mandated by Article 4 Paragraph (2) of Law No. 48

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of 2009 concerning Judicial Power continue to be questioned by the public justice seeker. 13 There are still many challenges that must be faced by the judiciary in Indonesia, especially regarding the implementation of judicial processes that are free from bribery, partiality, and Other judicial mafia practices that are difficult to contain, to the challenge of improving the quality of human resources of judges who must always follow mass developments ah-contemporary legal issues .

The implementation of the execution of civil judgments is ideal, every judge's decision must meet the elements of justice, legal certainty and sustainability, but in reality it is very difficult to find a judge's decision meets These three elements, yeng ultimately cause obstacles as described above, therefore the author is interested in studying and researching the problems of execute implementation Civil judgment in practice using the approach of legal theory as an anal knife of Isis, namely the theory of justice, the theory of legal certainty and the theory of expediency from Gustav Radbruch to answer the problem. Gustav Radbruch stated that justice is the crown of legal certainty. Justice is the soul of the law. Law without justice ibarat body without soul, because the spirit of law is justice, the soul of law is justice. Legal certainty that ignores justice is not law. On the contrary, lawless justice will still exist. Justice is in the midst of the heartstrings of the people. As evidence 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 judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society. [2]So far, the law has only been firmly principled towards procedural justice, not substantial justice. In this case, procedural justice is justice that refers to the sound of the law.

Regarding normative legislation to find justice formally, further study is also needed whether materially justice can really be felt materially for many or not. The enforcers of justice procedural often do not care about it. The enforcers of procedural justice, usually classified as positivists and do not see how the public does not feel justice which is actually the law is a means of realizing justice that not just formalitas.[3]

Nevertheless, in practice the execution of court decisions is not easy to carry out. There are several cases that have permanent legal force (inkracht van gewijsde), but have experienced obstacles in the execution of execution, especially the non-compliance of the Execution Respondent, to carry out the contents or judgment voluntarily, the absence of cost and the physical resistance on the part of the Execution Respondent by using mobs to confront officers Court and security personnel.

Therefore, as an illustration of the Execution problem that occurred in the Palembang District Court where based on the Palembang District Court Decision Number 90/Pdt.G/ 2011/PN Plg dated February 22, 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 Review Decision Return No. 540 PK/Pdt/2015 dated December 14, 2016, the Execution applicant is the rightful owner of the sengketa object i.e. a plot of land covering an area of 10,900 m² (ten thousand Nine hundred meters) square) located on Jalan Resident A. Rozak (Patal Pusr), RT.47/RW.10, Kelurahan 8 Ilir, District Ilir Timur III, Kota Palembang

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(formerly Jalan Residen A, Rozak, RT.15/RW.06 Kelurahan 8 Ilir, District Ilir Timur II, Kota Palembang), based on Palembang District Court Decision Number 90/Pdt.G/2011/PN Plg dated February 22, 2012 juncto Palembang High Court Decision Number 47/PDT/2012/PT PLG dated 19 July 2012, juncto Cassation Decision Number 1547 K / Pdt / 2013 dated October 29, 2013, juncto Review Decision Number 540 PK / Pdt / 2015 dated December 14 2016.

After the execution process has begun and reached the Konstatering stage by the Perunas, the district court conducts research on the location of the object of dispute accompanied by officers of the Palembang City Land Agency and It turns out that part of the obye execution a quo has been executed in another case based on the Decree of Execution of Discharge No. 22/08/Pen.Pdt.G/ Eks/ 2008/PN Plg dated 15 August 2012 and Minutes of Execution of Emptying No. 22/08/BA. Pdt.G/ 2008/Ex/PN Plg, dated October 22, 2012 in the case between Thamrin, et al, as the Execution Petitioner versus Makmur Abdullah, et al as the Respondent Ekpersecution, so that Execution based on Palembang District Court Decision Number 90/Pdt.G/2011/PN Plg dated February 22, 2012 juncto Palembang High Court Decision Number 47/PDT/2012/PT PLG dated July 19 2012, juncto Cassation Decision Number 1547 K/Pdt/2 013 dated October 29, 2013, juncto Review Decision Number 540 PK/Pdt/2015 dated December 14 2016 was only carried out on part of the object of dispute, which is 488 m^2 out of a total area of 10,900 m^2, on the grounds that the remaining 10,412 m^2 cannot be executed because it is involved with other things.

Continuation of execution a quo the execution petitioner is filing a lawsuit against the remaining objects of dispute that have not been executed covering an area of 10,412 m^2, namely the rest of all objects of dispute covering an area of 10,900 m^2 reduced by objects that have been executed covering an area of 488 m^2.

Not all of the factors inhibiting the execution mentioned above can be experienced by the district court, but there are more and more applications. The execution is handled by more and more inhibiting factors that ultimately have not created the ease of doing business in Indonesia. In the case of business competition disputes, according to Law Number 5 of 1999 concerning the Prohibition of Monopoly 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 that specializes in handling business competition on the legal basis of the Usah Competition Law. a. This institution is a^4 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 much greater because the KPPU has the authority to adjudicate business competition cases at an early stage with a decision that Provide administrative sanctions to other business actors who can ensure the ease of doing business with economic value in improving public welfare in accordance with the objectives of the rule of law Indonesian. Based on the description above, the problem is what is needed in the implementation of Civil Judgment Execution in order to be more effective and efficient in ensuring convenience Doing Business in Indonesia?

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METHODS

Pthere is this study using normative legal approaches and empirical law, in the form of positive law that can reveal legality in the form of rules, legal principles, legal aspects in laws and regulations both in relation to the denial of judges' decisions that already have permanent legal force, as well as to the implementation of the execution of problematic civil judgments until it cannot be executed effectively and efficiently.

This research is descriptive analytical, which is a study conducted to describe the facts that occur and then analyze the facts that occur in this case Review and analyze the authority of the court institution responsible for implementing decisions/conducting ex-execution of civil decisions. As an effort to be able to answer or solve the problems raised in this study, qualitative data analysis methods are used,

The form of research results is in accordance with the type of research that is diagnost, namely legal research that observes symptoms of a legal event which in this case is the authority of the court to carry out rapid execution to support the improvement of ease of doing business in Indonesia to ensure legal certainty and GUna supports alternative solutions to various obstacles in strengthening execution system in Indonesia.

DISCUSSION

1. Civil Execution

The definition of exsection or execution of a court decision, [5]is nothing other than forcibly executing a court decision with the help of a general force if the losing party does not want to execute it voluntarily. Thus, in principle the institution of execution is not required if at a court the defeated party is willing to comply with it in good faith and carry out the contents of the judgment 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 [6]the implementation of national arbitration awards as well as international in the event that the object of its execution is within the jurisdiction of the law of the Republic of Indonesia. [7] Meanwhile, if we compare the way of carrying out the decision of a civil judge with the way of carrying out the decision of a criminal judge, then it can be said that the way of carrying out The decision of the criminal judge is rather easy, while the way to carry out the decision of the civil judge is rather difficult, where the criminal execution is carried out by the prosecutor (active), and the execution of a civil judge's decision is carried out by the clerk or bailiff by order of the chief justice of the district court (passive). In civil procedural law, the types of execution are distinguished based on the content and order of the court decision to be executed. Sudikno Mertokusumo argues that civil executions are classified into 4 (four) types, namely: [8]

1. Pay a sum of money (Article 196 HIR/208 RbG);
2. Carry out an act (Article 225 HIR/259 RbG);
3. Real extremism (Article 1033 Rv);
4. Parate execution (1155, 1175 Subsection (2) BW).

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While Yahya Harahap argues somewhat differently, namely that the type of execution carrying out an act is the same as real execution, while when the fulfillment is replaced by payment n some money. Thus, he argued that broadly speaking, civil execution consists of only two types of execution, namely: [9]

1. Real execution/concrete action; and
2. Execution of payment of a sum of money.

Although in principle that executes is both the execution of the judgment by force (execution of execution), between the two types of execution as mentioned above have differences that basic, namely: [10]

1. In real execution, the implementation is easier than the execution of payment of a sum of money, where to carry out the execution of payment of a sum of money, the stages of execution and auction sale are needed execution.
2. Real execution of its application is only possible against court decisions that have obtained permanent legal force, judgments immediately, provisional decisions, and peace deeds made before a judge (dading). While the execution of payment of a sum of money is not limited only to court decisions as mentioned above, but can also be based on certain deeds based on by the legal relationship of debt receivables whose evidentiary and executory power is equated with court decisions that have permanent legal force, namely: Groose Deed of Recognition debt, groose mortgage deed (aircraft and ships), Certificate of Liability (SHT), and Certificate of Fiduciary Guarantee. Execution of deeds as mentioned above is known as prate execution, which is usually as evidence of the legal relationship between receivables and receivables use certain material guarantees.

Legal Principles of Civil Execution

General principle (the decision must have permanent legal force) A decision that has acquired permanent legal force (in kracht van Gewijsde) is the main condition that must be fulfilled so that the judgment to be requested for execution can be granted (executable). Thus the judgment which can be executed is based only on the reason—that the judgment has acquired permanent legal force, because in the judgment it is There is a fixed and definite legal relationship between litigants; and in judgments that have acquired permanent legal force there is also a legal relationship which must be obeyed and even if fulfilled by the defendant, or formally a judgment that has legal force still has an esecutory nature with There are irahs "For the sake of justice based on the one and only god".[11]

However, in the theory of civil procedural law, especially regarding execution, to the general principle of execution mentioned above there are some exceptions. In other words, it is still possible to carry out an execution in some circumstances without waiting for a decision that has permanent legal force first.

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Some of these exceptions are:

1) Enforceable judgments in advance;
2) Implementation of the provision decision;
3) Peace deed;
4) Execution of Grosse Deed of Mortgage and Groose Deed of Recognition of Debt;
5) Execution of Fiduciary Rights and Guarantees.

2. Fast execution of verdicts

The execution of court decisions in civil cases is one of the issues that justice seekers often complain about. Execution is part of the process of handling cases that cannot be separated from the responsibility of the court. In addition to its diversity, execution faces challenges in the field for a variety of reasons. Call for example, concerns about security intrusions if executions are forced.

LeIP researchers found facts about a number of issues that arise in the execution of civil case decisions. In the execution of family cases, for example, it is found that there is no mechanism that is able to ensure the payment of child support and/or wife nafby the defendant. In addition, there is no binding mechanism for third parties (agencies where the application works) to ensure the execution of payment of livelihoods by defaulting respondents. The factors that cause problems in the execution of local cases are not single. Deputy Chief Justice of the Bengkulu High Court Siswandriyono explained, in the discussion forum, a number of factors. First, there is the issue of regulation. For example, parate execution in Law No. 4 of 1996 concerning Land Liability Rights and Objects Related to Land. Multiinterpretation, among others, regarding the General Explanation number 9 and the Explanation of Article 14 paragraphs (2) and (3) of the Law on Rights of Dependents.

3. Improving the Ease of Doing Business in Indonesia

Ease of Doing Business Index is an index created by the World Bank to rank the ease of doing business in a country. [12] The Indonesian government itself is committed to improving existing services and governance and continues to ignore every priority indicator. Indonesia continues to show its achievements in obtaining the title as a business-friendly country. This can be seen from Indonesia's Ease of Doing Business (EODB) ranking which continues to improve. At 20 20, EODB Indonesia was ranked 73rd in the world. The purpose of the assessment is to provide an objective basis to market participants about the ease of doing business in a country. [13]

World Bank Country Director for Indonesia and Timor-EsteRodrigo A. Chaves explained, the reason Indonesia's ranking fell was because the increase in Indonesia's ease of doing business score was not as big as some other countries. In addition, when compared to the previous year, Indonesia's score increase is also quite low. If the previous year the score increase reached 66 percent while this year it was only 1.42 percent.

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

Investors in making their investments, face different conveniences and obstacles when expanding their business to various countries. The difference in ease of making investments has encouraged 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 financed by the World Bank. [14]

Based on the Doing Business 2019 report, the ranking of ease of doing business in Indonesia is in the 73rd position (seventy-three). EoDB Indonesia's ranking is still far from the target, which is ranked in the top 40 (forty) in the world. [15] 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, registration property (registering property), getting credit, protecting minority investors, paying taxes, cross-border trade (trading across borders), labor market regulation, enforcing contracts, and resolving insolvency.

The role of the judiciary in the ease of doing business, especially when business actors and/or related parties haverights disputes involving the court.At least, there are two parameters of ease of doing business that intersect with judicial authority , namely contract enforcement (enforcing contract) and bankruptcy settlement (resolving insolvency). The judiciary in general its contribution to the improvement of 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 Some breakthroughs include the Supreme Court (MA) also plays a role in improving the ease of doing business in Indonesia. In form, the Supreme Court issues a number of policies in the form of a Decree of the Chairman of the Supreme Court (SK KMA), MA Regulations (PERMA), or Supreme Court Circular as adequate legal instruments that provide certainty, security, and assurance is better at trying.[16]

In the application of decision execution in supporting the ease of doing business, it is associated with the theory of justice, legal certainty and legal expediency which are the objectives of law. First, keadilan is a condition in which the same case is treated equally. As for justice, it has a lot to do with 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 is related to the deepest feelings and minds. With regard to justice, Radbruch stated: "Summum ius summa inuiria" which means supreme justice is conscience. Radbruch 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, is for the law to be 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 intended to protect 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 the arbitrary actions of the government. Third, expediency is defined as a legal goal that must be aimed at something useful or has benefits. The law essentially aims to bring pleasure or happiness to many people. That the state and law are created for the true

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benefit of the happiness of the majority of the people. In legal purposes, among others, SEMA No. 2 of 2016 concerning Increasing Efficiency and Transparency in Handling Bankruptcy Cases and Postponement of Debt Payment Obligations in Court. With the aim to further speed up the process of solving business matters. Because, so far the process of settling commercial cases in the Commercial Court still takes 3-6 months. The stages and timeframes for resolving this case are more simplified, faster, especially in terms of settling the bankruptcy boedel. In addition, the Simple Lawsuit PERMA also speeds up the process of settling civil cases and the stages are simpler. The settlement of this simple case lawsuit has been decided in a maximum of 25 days (final decision) with a single judge and the value of the object of the lawsuit is below Rp. 200 million. Like ordinary civil lawsuits, this simple lawsuit sets the criteria as a case of default (default) and / or unlawful acts (PMH).[17]

Furthermore, the Supreme Court also issued Supreme Court Regulation Number 2 of 2015 concerning Simple Lawsuit Procedures or more familiarly referred to as Small Claim Court, issuing Supreme Court Regulation Number 2 of 2016 concerning Mediation, Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, issuing Supreme Court Regulations Number 14 of 2016 concerning Procedures for Resolving Sharia Economic Cases, Establishment of a Working Group on Business Development through the Decree of the Chief Justice of the Supreme Court Number 37 / KMA / SK / II / 2017, issuing Regulations Supreme Court Number 03 of 2018 concerning Electronic Administration of Cases in Court, developed the e-Court Application, whose features are not just 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 bases that must be present in laws and regulations in Indonesia. This is the reason why Indonesia recognizes primary sources of law consisting of laws and regulations that 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 implication of the value of legal certainty and legal expediency. Currently, there are four problems that become obstacles in carrying out execution, namely:

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

According to Retnowulan Sutantio and Iskandar Oeripkartawinata, execution is a forced action by the court against the losing party and does not want to carry out the verdict voluntarily. [18]Furthermore, M. Yahya Harahap defines execution as legal action carried out by the court to the losing party in a case, which is a follow-up rule and procedure of Case Examination Process. Execution is nothing other than the continuous action of the entire civil procedural proceeding. [19] R. Subekti uses the term execution or execution of the judgment and defines it as the defeated party does not want to obey the judgment voluntarily so that the judgment must be forced to him with the help of general power. [20]In line with R Subekti, Sudikno Mertokusumo also used the term execution or execution of a judgment which means the realization of the obligation of the party concerned to fulfilling the achievements listed in the ruling.[21] These four views explain the definition of execution which is limited to the execution of court decisions alone. A broader definition of execution was put forward by Mochammad Dja‟is,

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namely: "Execution is a credible attempt to realize rights by force because the debtor does not want to voluntarily fulfill its obligations. Thus, execution is part of the legal dispute resolution process." The definition shows that execution is also an effort to realize rights, not just the execution of court decisions. Strengthening this view, in practice the court not only accepts execution applications for court decisions, but also decisions of quasi-judicial institutions, including: (1) rulings arbitration; (2) the decision of the Consumer Dispute Settlement Agency (BPSK); (3) the decision of the Business Competition Supervisory Commission (KPPU); and (4) the decision of the Information Commission (KI). The court also accepts execution applications for documents that are equated with judgments of permanent legal force based on laws and regulations, including: (1) grosses deed; (2) certificate of liability; and (3) certificate of fiduciary guarantee.[22]

There is non-compliance on the part of the execution respondent to carry out the contents of the decision that has the force of law remains voluntarily 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 it is necessary to have a forced action 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 of the execution.

Regarding cultural factors, there is a tendency for the execution respondent to try to thwart the execution in various ways, in order to preserve the goods to which he thinks are his right. For example, by influencing residents around the place where the object of execution is located who are sympathetic to him to fight to act anarchically so that the execution does not take place? The attempt at resistance made by the respondent, the execution of both legal and physical resistance, is feared to set a precedent that will then be followed and continue to be carried out by society, so that it eventually becomes a legal culture that develops in society which can ultimately damage the order in the execution of court decisions. To overcome this problem, our society must be given a correct understanding of the law and increased awareness of the law. Therefore, the Chairman of the District Court as the party responsible for the execution must be able to provide legal understanding and encourage legal awareness, especially for The execution respondent during aanmaning, so that the execution respondent can fulfill the verdict or at least not to engage in resistance or anarchistic acts when going to carry out execution. For this reason, it is also expected that the bailiff at the time of issuing the aanmaning summons, carry it out correctly and responsibly, that is, the summons must really arrive to the execution respondent and encourage the execution respondent to be present at the time of aanmaning, so that it can be given an adequate understanding by the chief justice of the importance of the district court execution at the time of aanmaning.

2. No Standard Regulation on Security Application Fees

The execution of real executions involving the assistance of the police imposes security costs on the applicant. Almost all presiding court in the area of study said that the court was not authorized to determine security costs. Security costs are fully handed over to the police and coordinated directly between the applicant and the security forces, which is generally calculated based on the amount of food allowance in the area multiplied by the number of

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security personnel to be deployed. This is in contrast to the practice in Italy, Germany and the Netherlands, where no security charges are drawn for police involvement in securing executions, as police are considered carry out public service duties in the public interest.[23]

Given that the amount of security costs depends largely on the number of security personnel involved, there needs to be rules regarding the mechanism for determining the number of personnel. With the current mechanism, the determination of personnel can be carried out during coordination meetings between the court and the police. In the meeting, the court must provide an overview of the conditions of the location of the object of execution, especially regarding the presence or absence of potential resistance when the execution is carried out based on the results local inspection. If necessary, the police can conduct field inspections to ascertain the potential for resistance where the cost of these checks is included in the security costs that the components are equated with the cost of security that has been described as a level. This provision regarding notification of the results of local inspections and field inspections does not apply if the local inspection has involved the police.

To ensure transparency and accountability of the process of determining the number of personnel and the amount of security costs, the applicant, as the party who pays the costs in advance, must be involved in the process. For this reason, there needs to be a rule that requires the involvement of the applicant in a coordination meeting between the court and the applicant. Once the security fee is determined, the applicant is obliged to pay the fee immediately. Regarding these payments, there needs to be firm rules regarding the procedures for paying security fees. This regulation must explain who the police officer who wants to receive the payment and the payment mechanism that must be made. In order for this payment to be made effectively and accountably, the payment is made by transfer method to an account owned by the police so that this payment can be recorded clear and easy to prove. This provision must be followed by the rule that the police cannot ask for any fees after payment is made so that the security of execution is carried out by fees that have been paid.

Regarding execution security costs, because these costs are costs paid to be directly used in the execution process and are state revenues , these costs cannot be categorized as PNBP, so that the provisions in PP No. 60 of 2016 concerning Types and Rates of Non-Tax Types of State Revenue Applicable to the National Police of the Republic of Indonesia do not apply to the cost of securing execution. Under these conditions, this payment cannot be made by transferring to the police revenue account regulated in Article 20 PP No. 39 of 2007 concerning State/Regional Money Management. For this reason, the police need to have a special account that can be used to receive payment of execution security costs. Based on the provisions that da, ownership of the special account can be done by opening a temporary holding account that can be used to accommodate receipts and/or temporary expenses for certain purposes for which the opening of the account must be referred n to the Head of the State Treasury Service Office (KPPN). Thus, the police must immediately apply for the opening of the account so that they can immediately receive payment of the execution security fee through the transfer method. If the transfer of this account cannot be done, the Ministry of Finance must provide a special account for the police so that payment of execution fees can be made by transfer

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method So that the payment is effective and accountable. If observed, security measures are only issued if police personnel are involved in the execution process. For this reason, the existence of this security cost is expected to be an effective coercion so that the respondent does not resist, both during local inspections, and during execution implemented. This is because the respondent's resistance will make the court involve the police in carrying out the execution so that the respondent will bear the greater cost of execution. The greater the resistance made by the respondent, the higher the cost of execution to be paid because the number of police personnel involved will be more a lot. 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 its class. In the class I A court, the number of bailiffs is 5 people and substitute bailiffs are 10 people. In the court of class I B, the number of bailiffs is 4 people and substitute bailiffs are 8 people. There are 3 and 6 people in the second class court. [24]Field studies have found that the number of bailiffs currently in PN is limited. In the event that summons are being made to the respondent, especially summons to thermohon which is located far from the court or is in an island area with access to transportation With limited and uncertain geographical conditions, the summoning process became hampered because the number of bailiffs was limited. In fact, it was also found that the court had not had a bailiff for many years, so that the implementation of the function of the bailiff was carried out by the clerk. [25] This limitation is also vulnerable to making summons unable to be carried out in accordance with statutory provisions, namely between 3 working days. Given the vast territory of Indonesia with various geographical conditions, to ensure the number of bailiffs is properly available as needed, the practice of execution in Germany can be emulated. In Germany, the number of enforcement officers is adjusted to the number of subdistricts, so there is no subdistrict area that does not have bailiffs and the jurisdiction of the enforcement officer as well It only covers 1 sub-district area where he is assigned.[26] 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 sub-districts in the jurisdiction of the court. This arrangement can also be accompanied by the division of responsibilities of bailiffs and substitute bailiffs in each sub-district. If there is a sub-district where at any given time there is no application for execution, the bailiff in that sub-district may be seconded to another sub-district in the area of the court that the same whose execution requests are high or numerous. And vice versa. In this case, the court must use statistical data on incoming execution applications, so that it can be clearly seen which districts have the level of execution applications high or low, so that the number of bailiffs available is balanced with the burden of execution in each court. [27]

4. There is no regulation governing the peace of execution by parties outside the court

In addition to the aanmaning hearing, the parties can also agree on peace outside the court. However, field studies found that there were parties who achieved peace outside the court after aanmaning who did not report the peace to the court. This makes it unclear whether the execution will continue after the aanmaning period expires. The execution application will

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still be recorded in the execution register book because the court is not authorized to strike out the execution application if the applicant does not report the progress of the execution within a certain period of time, such as the authority to remove the lawsuitn from the list of cases if the plaintiff is not present at the first hearing after being validly summoned and proper,[28]or for not paying additional litigation after 30 days. [29] This is certainly detrimental to the court because it is considered to have the burden of execution that has not been implemented. Courts in Italy, Germany or the Netherlands have not specifically regulated this. However, the practice in Italy states that the respondent can stop the execution by paying the amount of money he owes to the applicant, either as repayment, or bail , through the bailiffs so that the court would know if the respondent had executed the execution order.

In this regard, there needs to be a firm arrangement that requires the applicant to provide information on the implementation of post-aanmaning executions, including the consequences of peace outside the court, in the period a certain time, for example 3 months. If the applicant does not provide information within that period, the execution application is declared void and the court is authorized to strike out the execution application from the register book execution. [30] In case the applicant wishes to proceed with execution, then he/she must file a new execution application and the execution process starts from the beginning. This is to encourage the parties to report to the court regarding the existence of peace outside the court, including its development.

CONCLUSION

In principle, the execution of civil judgments must be fast, simple, light costs, and legal certainty. In order to realize this, it is necessary to update the law related to the implementation of execution. As a product of the judiciary as well as the crown of the chief justice, a judgment that has the force of law will still be meaningless if it is not carried out execution. The delinquent execution, non-completion of execution or even non-execution will not only affect public confidence in the court as an institution that should provide justice and concrete legal certainty for the parties to the dispute, but also on the ease of doing business, investment opportunities and Indonesia's credibility in the international world. The state through each of its branches of power jointly carries out reforms of civil procedural law and other regulations to support the effective execution of civil judgments and efficient. Optimizing the role of institutions outside the court to support the maximum execution of civil judgments Increasing the capacity and quality of Bailiffs to be in accordance with needs in the field, thus it can be ascertained that it will ensure legal certainty and ease of doing business in Indonesia

SUGGESTION

1. It is recommended that the legislator or the Supreme Court can make a special set of technical regulations in the applicable regulations on procedures for implementing court decisions that has acquired permanent legal force which accommodates the principle of speedy, simple and low-cost trials.

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2. Strengthen supervision and harmonization of cooperation between relevant institutions that can assist and facilitate the implementation of executions in the field such as bailiffs, villages, police officers and other related Institutions.
3. The Supreme Court and the Police to draft a Joint Regulation on procedures for providing police security assistance for the execution of civil cases.
4. The Supreme Court and the Government (related ministries and agencies) to sit together in the long term to formulate the concept of integrated execution data/civil law enforcement data development.
5. The government to amend some provisions in the PP and regulations under it that have the potential to hinder execution and add some provisions in the PP and regulations below that are needed to Effective and efficient execution
6. Establish a special institution authorized and tasked with carrying out executions that move based on the existence of a decision and/or order from the Court, so that the burden of execution is carried out in the field is not entirely the burden of the District Court anymore. This is due to the lack of human resources and too many cases that enter the District Court every day.
7. The Supreme Court needs to make implementing regulations from Law Number 25 of 2007 concerning Capital Investment which focuses on discussing business dispute resolution in order to provide more legal certainty for investors and revise several articles in Law Number 37 of 2004 concerning Bankruptcy and PKPU that can be used for certain interests and do not protect investors.

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