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| RESEARCH ARTICLE

Legal Problems and the Ideal Concept of Civil Executions in Indonesia

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| ABSTRACT
This study aims to analyze the execution or implementation of judge decisions in civil cases carried out against judges' decisions with permanent legal force. Execution can be carried out voluntarily or by force. The implementation of the judge's decision is voluntarily carried out directly by the losing party without court intervention. In practice, the losing party is not willing to carry out the judge's decision voluntarily, so it is carried out by force through the District Court, which decides the case. Barriers to execution include unclear execution objects, having moved into the hands of other parties, issuance of new certificates and losing parties fighting back. Meanwhile, the juridical obstacle is a judicial review by the losing party. The third party filed a resistance because there was a third party's right that was taken; the judge's decision was not punishing but decratoir and constitutive. To prevent obstacles in the execution of executions and winning without winning only on paper, the losing party must have good intentions to carry out the judge's decision voluntarily, the court clerk or bailiff must be careful and thorough in confiscation, the losing party does not transfer the object of the dispute to another party. For the smooth implementation of the execution, the court may request assistance from the security forces (police and military) to provide security during the execution. The party who hinders or threatens the executing officer during the execution can be subject to criminal sanctions.

| KEYWORDS

Problematic, Ideal Concept, and Civil Execution

| ARTICLE INFORMATION

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1. Introduction

In Indonesia, the idea of legal problems and the concept of civil execution is very relevant because the national reform agenda still leaves many problems in the legal field. Reforms that should be directed *(intended change),* in fact, have not found a direction that is constructive. In terms of structure or institutions, for example, each institution is oriented towards the interests and powers of its institutions without paying attention to the synergy and integration with other legal institutions or institutions. Therefore, thinking about legal problems and the concept of civil execution must be ideal.[1]

For example, if there is a civil dispute between one party and another, the settlement of the dispute is often submitted to the court. The parties who take litigation to court have hope not only to get a decision on the case submitted but also legal certainty and justice for the settlement of the dispute. The amount of litigation costs incurred and the length of time taken by the party who feels aggrieved is expected to be directly proportional to the restoration of his rights, to be carried out voluntarily by the losing party. At the implementation level, not all losing parties are willing to voluntarily carry out the decision, so assistance is needed from state instruments, in this case, the court, as the party authorized to take actions to force the losing party to implement the decision. Court action to force the losing party to carry out this decision is called execution. The entry of a request for the execution

[1] Yati Nurhayati, "TEXTBOOK 'Introduction to Law'" (Nusa Media, 2020).

of a civil dispute to the court indicates that the losing party did not comply with implementing the decision voluntarily, so court assistance is needed to enforce it.[23]

Execution is a series of ways in the examination of cases carried out by litigation carried out in court. Execution is carried out after the judge's decision has been rendered its decision and the judge's decision has permanent legal force *(Inkaracht van gewisde)* and the party who does not take legal action against appeal and cassation. The judge's decision is said to have permanent legal force if the disputing party has accepted the judge's decision and has not taken any further legal action. The principle of execution of a decision can be carried out if the decision has permanent legal force, but there are exceptions to the principle of execution contained in the 180 HIR decision, namely an immediate decision *(Uitvoerbaar bij vorrad)*. The decision can be implemented even though the decision is not yet legally binding.[4]

In principle, execution is the reality of the obligation of the defeated party to fulfill an achievement, which is the right of the won party, as stated in the judge's decision. Execution is only required if the defeated party does not fulfill the decision voluntarily; therefore, its implementation is carried out by force through the court. The implementation of the judge's decision is nothing but the realization of the obligations of the parties concerned, especially the losing party, to fulfill the achievements listed in the judge's decision. Achievement is the obligation of the party involved in carrying out the judge's decision in accordance with the judge's decision.[5]

As mentioned above, in principle, execution can be carried out if the judge's decision has permanent legal force. However, there is an exception from the execution principle, which is contained in Article 180 of the HIR; even though the judge's decision is not yet legally binding, the execution can still be carried out, which is called an immediate decision *(Uit Voorbaar bij Vorraad)*, a provisional decision that responds to provisional demands, *acte van Vergelijk* is a deed of peace made by a judge at a trial which is given the same legal force as an ordinary decision. Grosse deed of Mortgage and Gresse deed of Notary which was given irah irah "For Justice Based on God Almighty as regulated in Article 224 HIR/258 RBG. Deed of Mortgage on land containing irah irah "For Justice Based on God Almighty," which is regulated in law. Law Number 4 of 1996 concerning Mortgage Rights.[6]

The implementation of decisions that have permanent legal force can be carried out in two ways, namely voluntarily and by force. The judge's decision is carried out voluntarily, meaning that the losing party actually accepts and fulfills the contents of the judge's decision without having to be carried out by the court. The implementation of the decision by force is carried out because the losing party is not willing and does not have good intentions to carry out the judge's decision voluntarily. The implementation of the decision by force is carried out based on the request of the party who wins the case by submitting an application either orally or in writing to the Head of the District Court, who decides the case. [7] Based on the request from the winning party, the Head of the District Court summons the defeated party to be warned (aanmaning) to carry out the Judge's decision voluntarily within 8 (eight) days after being warned (Article 196 HIR/208 RBG). If within 8 (eight) days, the losing party does not carry out the judge's decision or is not present after being reprimanded, then the Head of the District Court, with his stipulation, orders the Registrar or Bailiff to carry out the court's decision by confiscation of movable property which is estimated to cover the total amount of payment of money to be paid by the losing party plus the execution fee (Article 197 HIR/208 RBG).[8]

So based on previous studies, this research focuses more on legal problems and the ideal concept of civil execution. Through this article, it is hoped that it will explain the effectiveness of existing legal regulations and the dispute resolution model regulated based on these regulations so that they can encourage regulatory reforms if needed. The regulation reform aims to ensure legal certainty, justice and the benefits of the law itself.

2. Research Methods

The type of research used is normative juridical, namely an approach to the study of problems from the aspect of applicable legal regulations and related to the problems to be studied, namely Legal Problems and the Ideal Concept of Civil Execution. The research specifications are descriptive analytical, namely research that describes a situation or objects to lead to the problem to

[2] H R M Anton Suyatno and M Sh, *Legal certainty in the settlement of bad debts: through the execution of guarantees of dependent rights without litigation* (Prenada Media, 2018).
[3] Iswi Hariyani, "Legal Protection and Dispute Resolution of PM-Fintech Services Business," *Journal of Indonesian Legislation* 14, no. 3 (2018): 345–58.
[4] Suyatno and Sh, *Legal certainty in the settlement of bad debts: through the execution of guarantees of dependent rights without litigation*.
[5] Suyatno and Sh.
[6] H Amran Suadi and M SH, *Execution of Guarantees in Sharia Economic Dispute Resolution* (Prenada Media, 2019).
[7] Dian Latifiani, "The Problem of Implementing the Judge's Decision," *ADHAPER: Journal of Civil Procedural Law* 1, no. 1 (2015): 15–29.
[8] Ralang Hartati and Syafrida Syafrida, "OBSTACLES IN THE EXECUTION OF CIVIL CASES," *FAIR: Journal of Law* 12, no. 1 (2021).

be studied, without intending to draw conclusions that apply in general. Sources of data used are secondary data as the main data source and primary data as a source of supporting data. Research data implementation is presented in the form of analytical descriptive descriptions and then analyzed using qualitative methods.[9][10]

3. Discussion

As previously mentioned, apart from examining; judging; and deciding cases, the court is also authorized to implement court decisions in civil cases. [11] Article 54 of Law no. 48 of 200927 and Article 195 Paragraph (1) HIR. In general, the execution of civil disputes in Indonesia is regulated in HIR, RBg and Rv. The execution involved several first-level court officials, namely: the head of the court, the clerk and the bailiff. The chairman of the court, in his position *(ex-officio),* is the party authorized to lead and order the execution of civil disputes. [12] Article 54 Paragraph (2) of Law no. 48 of 2009. These authorities are regulated in Article 195 Paragraph (1) HIR or Article 206 Paragraph (1) RBg, which includes:[13]

1. The authority to review the execution request to see whether the execution request can be executed or not;
2. The authority to order the bailiff to summon the defendant or the respondent for execution (hereinafter referred to as the respondent) to come to court to be warned to implement the decision voluntarily;
3. The authority to give a warning (aanmaning) to the respondent to carry out the decision voluntarily within a period of at least 8 days;
4. The authority to stipulate an execution order as the basis for carrying out the execution and to order the clerk and/or bailiff to carry out a forced execution if within the 8 days period, as referred to in number 3, the respondent does not carry out the decision voluntarily; and
5. The authority to oversee the execution of Article 54 Paragraph (1) of Law no. 48 of 2009.

Meanwhile, the role of the clerk in the execution of civil disputes is regulated in Article 54 Paragraph (2) of Law no. 48 of 2009, namely, carrying out joint executions with the bailiff. The clerk also played a role in assisting the chairman of the court when reviewing the execution request and carrying out the order. This role is further detailed in Article 65 Paragraph (1) of Law no. 2 of 1986 and Article 103 of Law no. 7 of 1989, namely:[14]

a) carry out all orders given by the chairman of the session;
b) deliver announcements, warnings, protests, and notification of court decisions according to the methods based on the provisions of the law;
c) confiscate on the order of the chairman of the court;
d) make a confiscation report, a copy of which is submitted to the interested parties.

UU no. 48 of 2009 mentions the bailiff as a judicial official other than the secretary; Vice Secretary; deputy clerks; substitute clerks, and other structural officers. Elucidation of Article 46 letter e, with provisions related to the appointment, dismissal, and duties and functions, is regulated in Article 47 of the Law. The existence of bailiffs was known long before Indonesia's independence. Since it was first regulated and until now, the duties and authorities of bailiffs have not changed. Both bailiffs in the PN and PA are appointed and dismissed by the MA at the suggestion of the chairman of the court, while the substitute bailiffs are appointed and dismissed by the chairman of the court. Article 42 Paragraph (1) and (2) of Law no. 2 of 1986 jo. UU no. 8 of 2004 and Article 40 of Law no. 7 of 1989 jo. UU no. 3 of 2006. Unless otherwise stipulated by or based on the law, the bailiff may not be a guardian, custodian, legal adviser or official in connection with cases in which he himself has an interest. Article 43 Paragraph (1) and (2) of Law no. 2 of 1986 jo. Article 43 Paragraphs (1) and (2) of Law no. 8 of 2004 and Article 42 of Law no. 7 of 1989 jo. UU no. 3 of 2006.

SK KMA No. KMA/055/BK/X/1996 concerning Duties and Responsibilities and Work Procedures of Bailiffs in PN and PA states that:

1) bailiffs are part of the clerk's office;
2) the bailiff is responsible to the chairman of the court;

[9] Zainuddin Ali, *Legal Research Methods* (Rays Grafika, 2021).
[10] Ani Purwati, "Legal Research Methods Theory & Practice" (Jakad Media Publishing, 2020).
[11] Hartati and Syafrida, "OBSTACLES IN THE EXECUTION OF CIVIL CASES."
[12] Depri Liber Sonata, "The Issue of Conducting Auctions for the Execution of Court Decisions in Civil Cases in Practice," *Fiat Justisia: Journal of Legal Sciences* 6, no. 2 (2012).
[13] Susiana Soeganda, "Implementation of Article 10 paragraph (1) jo Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which requires judges to find law related to the decision of the Constitutional Court of the Republic of Indonesia Number 46 / PUU-XIV / 2016," *JUSTITIA NUSANTARA MEDIA LAW JOURNAL* 8, no. 2 (2019): 52–83.
[14] Dwi Agustine and Susiana Soeganda, "Renewal of the Civil Procedural Law System," *JUSTITIA NUSANTARA MEDIA LAW JOURNAL* 6, no. 1 (2017): 52–83.

3) in carrying out orders for summons/submission, announcements, warnings, protests and notifications, the bailiff is responsible to the chairman of the court/chairman of the trial;
4) in the case of confiscation, the bailiff is responsible to the chairman of the court/chairman of the trial;
5) the responsibility of the bailiff in the institutional context is to the head of the court. While administratively responsible to the clerk;
6) the bailiff has the duty to:
    a) make summons;
    b) carry out the task of implementing court decisions led by the head of the court;
    c) make a report on the implementation of the decision, the official copy of which is submitted to the interested parties;
    d) make offers for payment of money, as well as make minutes of offers for payment of money by mentioning the amount and description of the type of currency offered;
7) the working area of the bailiff covers the jurisdiction of the court concerned.

To be appointed as bailiff in the PN, a candidate must meet the following requirements:[15]

1) Indonesian citizen;
2) fear of God Almighty;
3) loyal to Pancasila and the 1945 Constitution;
4) has a secondary education certificate;
5) a minimum of 3 years experience as a substitute bailiff; and
6) able spiritually and physically to carry out duties and obligations.

Meanwhile, to be appointed as bailiff in the PA, apart from having to meet the same requirements as for bailiffs in a general court, the candidate must also be Muslim. Article 39 Paragraph (1) of Law no. 7 of 1989 jo. UU no. 3 of 2006. The requirement that the bailiff in a religious court must be Muslim, according to Bustanul Arifin, is not discrimination, but a qualification, considering the reality of the existence of a Religious Court in Indonesia which is devoted to handling cases of Indonesians who are Muslim. The experience requirement is a condition that frequently changes, as well as is the only condition that distinguishes it from being appointed as a substitute bailiff. To become a bailiff, the experience required is a minimum of 3 years experience as a civil servant in the PN or PA Article 40 Paragraph (2) of Law no. 2 of 1986 jo. UU no. 8 of 2004 and Article 39 Paragraph (2) of Law no. 3 of 2006.[16]

In legal arrangements regarding the settlement of lawsuits, a lawsuit is called a "case" if it faces a problem that cannot be adjusted between the parties, then the parties concerned ask for a settlement through a trial, and it is decided by a judge. Basically, all civil case settlement mechanisms are settled based on dispute resolution, so there are 3 (three) methods, namely the Non-Judicial Method; the Semi-judicial method (quasi-judicial method); and the judicial method through the court (judicial method). The non-judicial method can be used in the following ways: negotiation, mediation and conciliation. Meanwhile, the quasi-judicial method is through arbitration, and the judicial method is through the judiciary.[17]

Disputes can be caused by various factors, including differences in interests or disputes between one party and another. Disputes can also be caused by the existence of rigid rules that are considered barriers and obstacles to achieving the goals of each party because each party will make every effort to achieve its goals so that the potential for disputes becomes even greater. In order to initiate and resolve civil disputes between community members, one of the disputing parties must submit a request for examination to the court. The parties whose rights are violated in civil cases are called plaintiffs who file a lawsuit to the court and are directed to the violating party (defendant) by presenting the case (posita) and accompanied by what the plaintiff demands (petitum).[18]

In resolving disputes through the courts, the parties are obliged to follow all the processes that have been regulated in the civil procedural law, which regulates the procedure for examining cases. The stage of examination in a district court based on civil procedural law begins with the reading of the lawsuit, answers and exceptions, interlocutory decisions, repliks, duplicates, examination of evidence (evidence of letters and witnesses), conclusions or conclusions and finally, the decision of the panel of

[15] S H Djazimah Muqoddas, "ORDINANCES OF SUMMONING," n.d.
[16] H A Basiq Djalil SH, *Religious Justice in Indonesia* (Prenada Media, 2010).
[17] Indriati Amarini, "Effective and Efficient Dispute Resolution Through Optimization of Mediation in Courts," *Cosmic Law* 16, no. 2 (2017).
[18] Jimmy Joses Sembiring and M SH, *How to Resolve Out-of-Court Disputes* (Visimedia, 2011).

judges. In practice, from one examination procedure to the next, it will take 1 week, so if it is estimated, a civil case examined by the court will take at least 6 months.[19]

The development of legal relations in the economic and other civil fields in society requires dispute resolution procedures that are simpler, faster and less expensive, especially in simple legal relationships. The settlement of civil cases as regulated in the updated Indonesian Regulation (HIR), Staatsblad Number 44 of 1941 and the Regulation of the Procedural Law for Regions Outside Java and Madura (RBg), Staatsblad Number 227 of 1927 and other regulations concerning civil procedural law, is carried out by examination without to further differentiate the value of the object and the lawsuit as well as the simplicity of the evidence so that the settlement of simple cases takes a long time. The length of a case settlement process in court has various causes, ranging from the right of the parties not to attend if unable to attend to the limited courtroom and the number of judges examining cases. Therefore, in its latest breakthrough, the Supreme Court dared to make a legal breakthrough to shorten the time of the (civil) trial based on the rules issued, namely Supreme Court Regulation no. 2 of 2015 regarding the procedure for settling a simple lawsuit with a civil case settlement that can be done in just 25 days. A case that can be categorized as included in the regulation is regarding cases of default or acts against the law.[2021]

The principle contained in the Basic Law on Judicial Power (Law Number 14 of 1970) stipulates that the judiciary in Indonesia is carried out quickly, simply, and at low cost, but in reality, the principle of the speedy administration of justice has not been realized. If you want to find the cause, it turns out that it is no longer in the legal sector, but the obstacles already lie in the non-legal sector, such as economic factors (among others, judicial facilities are still very minimal), political factors (among others there is no government policy to increase the budget for judicial bodies, such as increasing the number of Supreme Court justices and other judges), cultural factors (among others the still hardening of the "prestige culture)" among members of the community are the causes, so that justice seekers in courts do not want to give in even though they actually know their side actually guilty and mostly for the sake of "prestige" they are still making appeals and cassation at the Supreme Court of the Republic of Indonesia.[22]

However, in practice, the settlement of civil disputes requires a long mechanism and is not as simple as expected; this is because the process of settling civil cases in district courts is carried out through several steps stages and processes duration, including the preparation stage, the stage of filing and registering the lawsuit, and the trial stage. At the first trial stage, the Panel of Judges, who has been appointed and determined by the Head of the District Court, offers mediation to the disputing parties through a mediator with a period of 40 (forty) days and can be extended for 14 (fourteen) days upon request the parties. If the mediator does not succeed in reconciling the parties in the process of further examination of the case, the Panel of Judges will still provide the opportunity for the parties to resolve the dispute peacefully in accordance with the provisions of Article 130 of the HIR (Het Herziene Indonesisch Reglement).[23]

Law in the civil sector, while in a narrow sense, is a procedure to obtain legal protection with the help of the Ruler, a procedure that contains a claim by a certain person through legal channels, and with a judge's decision, he gets what his "right". " or the interest which is presumed to be his right is. The absolute requirement to be able to file a lawsuit is the existence of a direct legal interest. So not everyone who has an interest can file a lawsuit if the interest is not direct and attached to him. Therefore, before the lawsuit is drawn up and submitted to the court, it is first considered and considered whether the plaintiff is really the person who has the right to file a lawsuit. If it turns out that you are not entitled, there is a possibility that the lawsuit will not be accepted. According to Sudikno Mertokusumo, "A lawsuit or a claim for rights is an action aimed at obtaining protection of rights granted by the court to prevent "eigenrichting" or vigilante action. In civil cases known in the legal system in force in Indonesia, there are two types of lawsuits, including Petition Lawsuit (Voluntair), which is a civil matter submitted in the form of an application.[2425]

As the term volunteer can be seen in the explanation of Article 2 paragraph (1) of Law no. 14 of 1970 (amended by Law No. 35 of 1999), which states: "The settlement of every case submitted to the judiciary contains the meaning in it the resolution of problems related to voluntary jurisdiction", a lawsuit (Contentious) is a civil matter in the form of a lawsuit. In the explanation of article 2 paragraph (1) of Law no. 14 of 1970 (amended by Law No. 35 of 1999), the duties and authorities of the judiciary are not only to

[19] Sembiring and SH.
[20] Efa Laela Fakhriah, "The mechanism of small claims cortt in realizing the achievement of a simple, fast, and low-cost judiciary," *Pulpit Law-Faculty of Law, Gadjah Mada University* 25, no. 2 (2013): 258–70.
[21] Intan Nur Rahmawayi, M H SH, and S H Rukiyah Lubis, *Win-Win Solution to Consumer Disputes* (MediaPressindo, 2018).
[22] Yodi Martono Wahyunadi, "Absolute Competence of State Administrative Courts in the Context of Law Number 30 of 2014 concerning Government Administration," *Journal of Law and Justice* 5, no. 1 (2016): 135–54.
[23] Sri Nurhari Susanto, "Application of General Principles of Good Government in Judicial Practice in Indonesia," *Administrative Law and Governance Journal* 4, no. 3 (2021): 459–70.
[24] AHMAD SAIFULLAH, "MOH. AHMADI M. ZAINUL ARIFIN," n.d.
[25] M Yahya Harahap, *Civil Procedural Law: On Suits, Trials, Seizures, Proofs, and Court Judgments* (Rays Grafika, 2017).

accept voluntary claims but also to settle contentious claims. A Simple Claim or Small Claim Court is a procedure for examining a civil lawsuit with a material claim value of a maximum of Rp. 200 million, which is settled with simple procedures and evidence. The settlement of small claims courts is a simplification of the mechanisms and procedures for the settlement of civil cases. The purpose of this simplification of simple claims is to provide fast, efficient, effective and low-cost civil case settlement services and infrastructure in courts for civil cases with small values.[26]

Simple is a program that is clear, easy to understand and uncomplicated. The fewer and simpler the formalities required or required in court proceedings, the better. Quickly refers to the course of the judiciary. In this case, it is not only the course of the judiciary in the examination before the trial but also the completion of the minutes of the examination at the trial to the signing of the decision by the judge and its implementation. It is not uncommon for a case to be delayed for years because witnesses do not come or the parties take turns not coming or asking to withdraw. Even the case is continued by his heirs. It is determined that the cost is low so that it is borne by the people. The high court costs mostly cause interested parties to be reluctant to file a claim to the court. The Supreme Court Regulation (PERMA) number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits was enacted in Jakarta on August 7, 2015, by the Chief Justice of the Supreme Court Muhammad Hatta Ali, and on the same date, the PERMA was promulgated by the Minister of Law and Human Rights, Yasonna Laoly. Perma number 2 of 2015 consists of 9 chapters and 33 articles. This regulation is a big step from the Supreme Court to realize the settlement of cases according to the principle of fast, simple and low cost, but what needs to be understood is that a settlement with a simple lawsuit can only be used for cases of breaking promises (wanprestasi) and/or unlawful acts (PMH).[27][28]

Simple in the explanation of Article 2 of the Law on Judicial Powers is that the examination and settlement of cases are carried out in an efficient and effective manner. Simple can also be interpreted as a process that is not convoluted, uncomplicated, clear, straightforward, non-interpretable, easy to understand, easy to do, easy to apply, systematic, and concrete both from the point of view of justice seekers, as well as from the point of view of law enforcers who have very diverse qualification levels, both in the field of educational potential, socio-economic conditions, culture and others. Quick is interpreted as a strategic effort to make the judicial system an institution that can guarantee the realization/achievement of justice in law enforcement quickly by the justice-seeking community so that a simple lawsuit is included in the authority or scope of the general court. Not all cases can be resolved with a simple lawsuit. Perma number 2 of 2015 stipulates that civil lawsuits can be categorized as simple lawsuits as referred to in articles 3 and 4 of the regulation, namely as follows:[29]

1. Disputes on breach of contract/default and/or lawsuits against the law with a maximum value of 200 million material lawsuits;
2. Not a case that falls within the competence of the Special Court;
3. Not a dispute over land rights;
4. The Plaintiff and the Defendant are not more than one each unless they have the same legal interest;
5. The residence of the Defendant must be known;
6. The Plaintiff and the Defendant must be domiciled in the same jurisdiction of the court.

These conditions are limited, one of the conditions mentioned above is not met, then the case cannot be resolved through the small claim court mechanism. The priority in this PERMA is the settlement of a simple lawsuit no later than 25 (twenty five) days from the day of the first trial.[30]

In essence, the role of law in society has a very important function and contribution to regulating interaction patterns so that there is no conflict between community members. With the law, the rights and obligations of community members become clear and guaranteed. The law will protect the rights of each person and maintain a harmonious balance between the various interests that exist. And if there is a violation, the law functions to rebalance the unbalanced situation.

According to JF. Glastra van Loon, the role of law in society can b[31]e distinguished as follows:

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[26] H Zainal Asikin and S U Sh, *Civil Procedural Law in Indonesia* (Prenada Media, 2019).

[27] S H Sulaikin Lubis, *Civil Procedural Law of Religious Justice in Indonesia* (Kencana, 2018).

[28] Wiryatmo Lukito Totok, "The Effectiveness of the Application of Supreme Court Regulation of the Republic of Indonesia Number 2 of 2015 (Perma No. 2 of 2015) concerning Procedures for Settling Simple Lawsuits in Settlement of Civil Cases (Study in the Kediri Regency District Court)," *Mizan: Journal of Legal Sciences* 9, no. 1 (2020): 35–44.

[29] Anita Afriana, "The Philosophical Basis and Inclusivity of Simple Lawsuits in the Civil Justice System," *University Of Bengkulu Law Journal* 3, no. 1 (2018): 1–14.

[30] Totok, "The Effectiveness of the Application of Supreme Court Regulation of the Republic of Indonesia Number 2 of 2015 (Perma No. 2 of 2015) concerning Procedures for Settling Simple Lawsuits in Settlement of Civil Cases (Study in the Kediri Regency District Court)."

[31] Abintoro Prakoso, "Sociology of Law," 2017.

1) Tool to discipline the community and regulate social life,
2) Resolving disputes,
3) Maintain and maintain order/rules whose implementation can be forced (forced),
4) Changing the rules/regulations in order to adapt to developments in society.

With the role/function of the law mentioned above, the objectives of the law are; justice (justice), legal certainty (rechtszekerheid legal security), and results (doelmatigheid) will be achieved. However, when the balance is disturbed and causes losses, people who feel that their rights have been harmed can file a lawsuit through legal channels in accordance with applicable procedures. According to Darwan Prints, a lawsuit is an attempt or action to claim the rights or force another party to carry out their duties or obligations in order to recover the losses suffered by the Plaintiff through a court decision. Meanwhile, Sudikno Mertokusumo stated that the lawsuit was a claim for rights, namely an action aimed at providing protection provided by the court to prevent vigilante action (eigenrichting).[32]

Thus, it can be seen that a lawsuit is an application submitted to the competent court regarding a claim against another party to be examined in accordance with the principle of justice for the lawsuit. And the method of dispute resolution through the court is regulated by the Civil Procedure Law (Burgerlijk Procesrecht, Civil Law of Procedure). Civil procedural law includes three stages of action. Namely the Preliminary stage, the Determination stage and the Implementation stage. The Preliminary Stage is a preparation leading to the determination or implementation. In the determination stage, an examination of events and evidence is carried out at the same time arriving at a decision. Meanwhile, in the implementation stage, the implementation is carried out rather than the decision. In connection with the implementation stage of the decision, in every decision to be handed down by the judge in terminating and resolving a case, it is necessary to pay attention to three very essential things, namely the element of justice, the element of expediency and the element of legal certainty.[33]

The role of the judge as an apparatus of judicial power, in principle, is none other than carrying out the function of the judiciary in accordance with the provisions of the applicable regulations. For judges in adjudicating a case, what is especially important is the facts or events and not the law. The rule of law is only a tool, while what is decisive is the event. To be able to resolve or end a case or dispute as accurately as possible, the judge must first know objectively about the actual seat of the case as the basis for his decision and not a priori find the decision while the considerations are only then constructed. The actual incident is known by the judge from the evidence. So instead of the decision being born in the process a priori and then just being constructed or consideration of the evidence is designed, it must first consider whether it is proven or not and then arrive at a decision.[34]

In carrying out this judicial function, judicial judges must be fully aware that the main task of judges is to uphold the law and justice. In connection with this, in every decision to be handed down by a judge in ending and resolving a case, it is necessary to pay attention to three very essential things, namely justice (gerechtigheid), expediency (zwachmatigheit) and certainty (rechtsecherheit). All three should receive professionally balanced attention, although, in practice, this is difficult to achieve. Judges must try their best so that every decision handed down contains the principles mentioned above. Don't let a judge's decision cause unrest and chaos in people's lives, especially those seeking justice.[35]

Definition of a judge's decision is the result or conclusion of a case that has been carefully considered, which can be in the form of a written or oral decision. Whereas a statement by the judge, as a state official who is authorized to do so, is pronounced at the trial and aims to end or settle a case or dispute between the parties. Not only what is said is called a decision, but also a statement that is poured in written form and then pronounced by the judge at trial. A draft decision (written) has no power as a decision before being pronounced in court by the judge. So it can be concluded that the judge's decision is the final conclusion taken by the Panel of Judges who are authorized to settle or end a dispute between the litigants and are pronounced in a trial open to the public.[36]

The principle that must be enforced so that a decision handed down does not contain defects is regulated in Article 178 HIR, Article 189 Rbg and Article 19 of Law Number 4 of 2004 (formerly regulated in Article 18 of Law Number 14 of 1970 concerning judicial power), between others:

[32] Surajiyo Surajiyo, "Justice in the Pancasila Legal System," *IKRA-ITH HUMANITIES: A Journal of Social And Humanities* 2, no. 3 (2018): 21–29.
[33] Ade Kosasih, "Critical Analysis of Voluntair's Lawsuit Against Maladministration Practices in the Field of Public Service," *MIZANI SCIENTIFIC JOURNAL: Legal, Economic, And Religious Discourses* 3, no. 1 (2018).
[34] Susanto, "Application of General Principles of Good Government in Judicial Practice in Indonesia."
[35] Dwi Rezki Sri Astarini and M H SH, *Court Mediation* (Alumni Publishers, 2021).
[36] D R M Hatta Ali and M H SH, *Simple Justice Fast & Light Costs Towards Restorative Justice* (Alumni Publishers, 2022).

1. Contains a clear and detailed rationale; The decision handed down must be based on clear and sufficient considerations. The legal reasons for consideration are based on the following provisions:
    a) Certain articles of legislation,
    b) Customary law,
    c) Jurisprudence, and
    d) Legal doctrine.

This is confirmed in Article 23 of Law no. 14 of 1970, as amended by law no. 35 of 1999 and now with Article 25 of Law no. 4 of 2004 concerning Justice, which stipulates that all court decisions must contain the reasons and the basis for the decision and include articles of certain laws and regulations relating to cases decided or based on unwritten law or jurisprudence or legal doctrine. In fact, according to Article 178 paragraph (1) of the HIR, judges, because of their position or ex officio, are obliged to fulfill all legal reasons that are not stated by the litigants.

2. Mandatory to adjudicate all parts of the lawsuit. This principle is outlined in Article 178, paragraph 2 of the HIR; the decision must be totally and thoroughly examined and adjudicate every aspect of the lawsuit filed. It is not permissible to only examine and decide part of it and ignore the rest of the lawsuit.
3. It is not permissible to grant more than the demands. This principle is outlined in Article 178, paragraph 3 HIR, Article 189, paragraph 3 Rbg and Article 50 Rv. The decision must totally and thoroughly examine and adjudicate every aspect of the lawsuit filed. It is not permissible to only examine and decide part of it and ignore the rest of the claim.
4. Spoken in public
    a) The principle of openness to the public is imperative (force). This principle is based on the principle of a fair trial; according to this principle, the trial examination must be based on an honest process from the beginning to the end. This principle is in contrast to the judiciary, which is secret (secrecy) or confidence as in the process of mediation or arbitration examination, with the aim of maintaining the credibility of the disputing parties.
    b) Legal Consequences for Violation of the Principle of Transparency The principle of examination and decision is pronounced openly, as confirmed in Article 5 letter e and Article 18 of Law no. 14 of 1970 as amended by Law no. 35 of 1999 now in Article 20 of Law no. 4 of 2004 concerning Judicial Power, besides that it is also regulated in the criminal procedure law Article 64 of the Criminal Procedure Code. Violation of the principle of openness as referred to in Article 19 paragraph 2 in conjunction with Article 20 of Law no. 4 of 2004 concerning Justice, resulting in; (a). Invalid, or (b). Has no legal force.
    c) In the case of a closed examination, the decision is still pronounced in an open trial. In certain cases, the laws and regulations allow the examination to be conducted in a closed session. However, this exception is very limited, especially in the field of family law, especially in the case of divorce. The principle of closed examination in a divorce trial is imperative, but as long as it concerns the process of pronouncing the decision, it is still subject to the provisions of Article 18 of Law no. 14 of 1970 as amended by Law no. 35 of 1999 now in Article 20 of Law no. 4 of 2004 concerning Judicial Power.
    d) Spoken in a court session In addition to the trial having to be open to the public, the examination and pronouncement of a decision is only valid and has legal force if it is carried out in a court session. Deviating from that provision will result in the decision being invalid and having no force.
    e) Radio and Television can broadcast live examinations from the courtroom. In accordance with the times, radio and television broadcasting and broadcasting can be done directly from the courtroom, and this has been widely applied in various countries.

HIR does not regulate in detail the strength of the decision. However, Indonesian legal experts have their own views, but it can be concluded that the strength of the decision is, among others:

1. Binding power. This binding nature aims to establish a right or a legal relationship between the litigants. In our procedural law, decisions have binding power in both a positive and negative sense. That can be explained as follows:
    a) In a positive sense, in principle, the court's decision is to settle disputes between them as they wish. These parties must submit and obey the decisions handed down by the court. And it is not allowed to do things that are contrary to the decision because the decision has binding force against the litigants (Article 1917-1920 BW).
    b) Whereas in a negative sense, the binding force on a decision is that the judge may not decide on cases that have been decided previously between the same party and on the same subject matter. Repetition of such actions may result in "Nebis in Idem" (Article 134 RV).
2. The strength of evidence and its purpose is to be used as evidence by the parties, which may be used for the purposes of appeal, cassation or also for execution. So the decision must be made in writing, and also an authentic deed that

can be used as evidence. Even though the decision does not have binding force against a third party, it has the power of proof against a third party. The strength of proof against criminal decisions is regulated in articles 1918 and 1919 BW, but there is no provision regarding the strength of proof of civil decisions. According to article 1916, paragraph 2 Number 3 BW, the judge's decision is an assumption. The judge's decision is an assumption that its contents are true: what has been decided by the judge must be considered correct (res judicata pro veritate habetur). The strength of proof of civil decisions is left to the judge's consideration. Judges have the freedom to use the power of proof of previous decisions. Verstek decisions have no binding value at all.

3. Executive Power. Decisions that already have permanent legal force or have definite power have the power to be implemented (executoriale kracht, executionary power). If the judge has examined a case that has been submitted to him, then he must make a good and correct decision. At the implementation stage of this decision, a decision that is in kracht van gewijsde (permanent legal force) will be obtained. The decision which has permanent legal force (in kracht van gewijsde) can be continued at the execution stage.

According to M. Yahya Harahap, execution is a legal action taken by the court against the losing party in a case, which is a follow-up rule and procedure for the case examination process. Therefore, execution is nothing but a continuous action of the entire Civil Procedure Law process. Execution is an integral part of the implementation of the procedural rules contained in HIR/Rbg.[37]

Methods for carrying out court decisions called executions are regulated from Article 195 to Article 224 HIR or Article 206 to Article 258 Rbg. However, at present, not all of the provisions of those articles are effective. What still really applies, especially Article 195 to Article 208 and Article 224 HIR or Article 206 to Article 240 and Article 258 Rbg, besides that there is also Article 225 HIR or Article 259 HIR which regulates the execution of court decisions that punish for committing a crime. "certain actions", then there is also Article 18 HIR or Article 191 Rbg, which regulates the implementation of a decision "immediately" (uitvoerbaar bij voorraad), i.e. the implementation of an immediate decision can be carried out first even though the decision has not yet obtained permanent legal force. Meanwhile, Articles 209 to 223 HIR or Articles 242 to 257 Rbg, which regulate "hostages" (gijzeling), are no longer treated effectively.[38]

These rules are the guidelines for execution actions. However, in its implementation, it cannot be separated from other regulations, such as those contained in legal principles, jurisprudence and judicial practice, as a tool to help solve execution problems that arise in the concrete. For example, the execution of mortgages and Mortgage Rights (HT) cannot be resolved only by linking the execution articles in the Civil Code but also by linking them to the Basic Agrarian Law No. 5 of 1960 and Law no. 4 of 1996 concerning Mortgage Rights.[39]

4. Conclusion

In implementing the judge's decision by force, it is done because the losing party is not willing to carry out the judge's decision voluntarily. Barriers to the implementation of forced executions can be in the form of juridical and non-juridical obstacles. Non-juridical obstacles are the object of execution unclear or vague, the object of execution changing hands to a third party, the issuance of a new certificate for the object of execution, the losing party is not willing to carry out the judge's decision to mobilize the masses, use objects to hinder the executing officer. Barriers to judicial execution are the existence of judicial review efforts, resistance by third parties (derden verzet), and the judge's decision is not punitive (condemnatoir) but is a statement (declaratoir) and creates or eliminates legal relations (constitutief). In practice, it is found that the winning party only wins on paper or wins empty because the object of execution no longer exists or the executed party can no longer show the object of execution. The implementation of the judge's decision is carried out by the Registrar or bailiff based on a letter of determination from the Head of the District Court, who decides the case. The clerk or bailiff, in carrying out the execution, shall make a report on the execution of the execution, which is witnessed by two witnesses. The Court may request the assistance of the security forces (Police or TNI) to maintain security in the execution.

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[37] Ha *Civil Procedural Law: On Suits, Trials, Seizures, Proofs, and Court Judgments*.
[38] Astarini and SH, *Court Mediation*.
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