



## THE NON-EXECUTABLE CIVIL DECISION: WILL THEY GET LEGAL CERTAINTY?

Ning Adiasih

Universitas Trisakti, Jakarta, Indonesia

[ning.a@trisakti.ac.id](mailto:ning.a@trisakti.ac.id)

Gandes Candra Kirana

Universitas Trisakti, Jakarta, Indonesia

[gandes@trisakti.ac.id](mailto:gandes@trisakti.ac.id)

Ehsonov Jasurbek Rustamovich

Tashkent State University, Uzbekistan

[mr.exsonov@mail.ru](mailto:mr.exsonov@mail.ru)

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### ABSTRACT

*The aims of this research is to analyze the basis for judges' considerations in issuing non-executory civil case decisions and to analyze the legal consequences that arise after the civil case decision is declared unexecutable. This legal research is a type of normative or doctrinal research that is descriptive analytical in nature. The results of this study are that non-executory reasons are not directly regulated in the HIR/Rbg, these reasons are regulated in Book II, Edition 2013: Technical Guidelines for Administrative Courts and Technical Courts for General and Special Civil Courts. The legal consequences of civil case decisions that are declared unexecutable by the Court judge because the execution must be stopped on the grounds of error in objecto. The novelty in this writing is that a decision that contains an error in the object that causes the decision to lose its enforceable power, then based on Article 231 RBg, the judge must order the execution seizure of the land on which the execution order is placed to be revoked and then its status returned to its original state.*

### A. INTRODUCTION

Law has become a means for society to make various changes.<sup>1</sup> Justice is one of the aims and ideals of law, however, the measure of justice is often interpreted differently.<sup>2</sup> Justice itself has many dimensions, in various fields, for example economics and law.<sup>3</sup> In the life of any society

- 1 Andri Winjaya Laksana (etc)., *Lembaga dan Pranata Hukum*, (Medan: Tahta Media Grup, 2024): 1
- 2 Melisa (etc)., Kedudukan Hukum dalam Mewujudkan Keadilan dan Kesejahteraan di Indonesia, *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 5, No. 1 (2023): 241-254
- 3 Inge Dwisvimiar, Keadilan dalam Perspektif Filsafat Ilmu Hukum, *Jurnal Dinamika Hukum* 11, No. 3 (September 2011): 522-531

there are various forms of interests.<sup>4</sup> These interests are in harmony with each other, but there are also those that conflict with each other, often causing civil disputes.

The process of examining civil disputes in court hearings is essentially aimed at resolving disputes by issuing court decisions.<sup>5</sup> It is not an easy matter for a judge to be able to decide a case, moreover the decision must be fair and satisfy both parties in dispute. In addition to making a legal decision, a judge must also consider non-legal considerations, which means considerations that are seen from non-legal aspects.<sup>6</sup> To determine who is right and entitled, a judge's decision is required, in this case the judge truly functions as a judge who tries and decides who among the parties is right and who is not right.<sup>7</sup>

A judge's decision is not free from errors or mistakes, it is even possible that it is biased, therefore for the sake of truth and justice every judge's decision needs to be possible to be re-examined<sup>8</sup>, so that errors or mistakes that occur in the decision can be corrected. For every judge's decision, there is generally a legal remedy available, namely an effort or tool to prevent or correct errors in a decision.<sup>9</sup>

Execution is a legal action carried out by force by the court against the losing party to fulfill the contents of the judge's decision. The winning party in a civil dispute can ask the State's power apparatus to implement the court decision that has obtained permanent legal force. Execution is the forced implementation of a decision if the losing party does not want to fulfill the court's decision. The Chief Justice gives a time limit, if within the time limit the executed party still does not carry out as stated in the warning, then a confiscation can be carried out which is called an execution seizure.<sup>10</sup> Basically there are two forms of execution in terms of the target to be achieved by the legal relationship stated in the court decision. Sometimes the target of the legal relationship to be fulfilled is in accordance with the verdict or dictum, namely carrying out a "real action" or "real action", so that this kind of execution is called "real execution". Sometimes the legal relationship that must be fulfilled in accordance with the verdict is to make

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4 Hilda Ananda and Siti Nur Afifah., *Penyelesaian Secara Litigasi Dan Non-Litigasi, Sharecom: Jurnal Ekonomi Syariah dan Keuangan Islam* 1, No. 1 (2023): 55-64

5 Melani Yustianing.A (etc)., *Tinjauan Perlawanan Untuk Menunda Eksekusi Dalam Sengketa Perdata (Studi Kasus Perkara No: 8/Pdt.Plw/2000/PN Probolinggo)*, *Jurnal Verstek* 2, No. 3 (2014): 142-151

6 Emiasari Sarumaha., *Dasar Pertimbangan Hakim Dalam Menjatuhkan Putusan Pidanaan Kepada Anak Sebagai Pelaku Tindak Pidana Persetubuhan Yang Dilakukan Dengan Kekerasan (Studi Putusan Nomor 10/Pid.Sus-Anak/2016/PNSgm)*, *Jurnal Panah Keadilan* 2, No. 2 (August 2023): 81-93

7 Retnowulan Sutantio dan Iskandar Oeripkartawinata., *Hukum Acara Perdata Dalam Teori Dan Praktek*, (Bandung: Mandar Maju, 2005): 10

8 Chuasanga A., Ong Argo Victoria., *Legal Principles Under Criminal Law in Indonesia and Thailand*, *Jurnal Daulat Hukum* 2, No. 1 (2019)

9 Sudikno Mertokusumo., *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty Yogyakarta, 2002): 224

10 Adinda Maretsyah Purba dan Fauziah Lubis., *Hambatan Dalam Pelaksanaan Putusan (Eksekusi) Perkara Perdata*, *Jurnal Hukum dan Kebijakan Publik* 6, No. 3 (2024): 209-213

"payment of a sum of money". This kind of execution is called "payment of money" execution".<sup>11</sup>

Carrying out real execution if observed carefully, theoretically is very easy and simple.<sup>12</sup> No complicated procedures and formalities are required. That is why real execution is not regulated in detail in the Law, but in reality in carrying out real execution always encounters many obstacles, this is because there is always resistance from the executed party both before the execution is carried out and when the execution is carried out.<sup>13</sup> Court decisions that require execution are only decisions that contain court orders to the losing party. Therefore, only decisions that are of a condemnatory nature require execution. Decisions that are constitutive or declaratory in nature do not require execution because they are automatically valid. The problem is what if the condemnatory decision is not carried out by the losing party in a dispute.<sup>14</sup>

The purpose of this study is to analyze the basis for judges' considerations in issuing non-executory civil case decisions and to analyze the legal consequences that arise after a civil case decision is declared non-executory.

## **B. RESEARCHES METHODS**

This research used normative or doctrinal research that was descriptive analytical. The approach used was a case study. The sources of legal materials consist of primary legal materials and secondary legal materials. The technique of collecting legal materials used was a literature study. The analysis of legal materials in this legal research was carried out by syllogistic deduction.

## **C. RESULTS AND DISCUSSION**

### **1. Basic Considerations of Judges in Handing Down Decisions in Non-executory Civil Cases**

Laws are formed, then implemented and maintained by a power, namely the state, and this is very strong in countries whose positive law is based on a codification system, including Indonesia.<sup>15</sup> The existence of written regulations in a legal state that adheres to a codification system is in line with Hans Kelsen's view that law as law is action, as well as one of the many political tools with which the rulers of society can realize their policies. Legal protection is the protection of honor and

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11 M. Yahya Harahap., *Hukum Acara Perdata cet. (10)*, (Jakarta: Sinar Grafika, 2010): 23

12 Heppy Indah Hapsari., Studi Putusan Yang Tidak Dapat Dieksekusi (Non Eksekutable) Dalam Perkara Perdata (Studi Putusan Nomor 16/Pdt.Plw/2014/PN.Kdl), *Jurnal Verstek* 6, No. 2 (2018): 11-18

13 Muhammad Adiguna Bimasakti., *Perbuatan Melawan Hukum (PMH) Oleh Pemerintah / Onrechtmatige Overheidsdaad (OOD) Dari Sudut Pandang Undang-Undang Administrasi Pemerintahan*, (Yogyakarta: Deepublish, 2018): 76.

14 Dikdik Somantri., Challenges in Execution of Court Decision To Strengthen The Administrative Court Charisma, *Jurnal Hukum Peratun* 4, No. 2 (August 2021): 123-140

15 M. Elpha Darnia (et. al)., Strategi Penguatan Hukum Perlindungan Konsumen Dalam Era Digital. *Perkara: Jurnal Ilmu Hukum Dan Politik* 1, No. 4 (2023): 44-58.

dignity, as well as the recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness or as a collection of regulations or rules that will be able to protect one thing from another. In relation to consumers, this means that the law provides protection for consumer rights from something that results in non-fulfillment of these rights.<sup>16</sup> Legal problems occur when the Executorial Respondent applied for an executorial confiscation (execution upon payment of a certain amount of money) on the permanent legal forced judgment.<sup>17</sup> the Execution Applicant could file an executorial confiscation of the movable and/or immovable assets or objects of the Execution Respondent.<sup>18</sup>

A judge's decision that has obtained permanent legal force must be implemented by the party concerned, namely the losing party. The implementation of a judge's decision or execution is essentially a form of realization of the obligation by the losing party to fulfill the performance as stated in the decision. Of course, it is not easy to realize this obligation, because often there is resistance from the losing party to fight the execution. The case studied by the author is a case of resistance (*verzet*) from the losing party (defendant) where in one of the verdicts the judge stated that the decision could not be executed (non-executable), court decision that has acquired legal force may not always be complied with voluntarily by the losing party in a case.<sup>19</sup>

In the case studied by the author, on the appointed trial day the Defendant and his attorney were never present even though they had been properly summoned 2 (two) times in a row, therefore the judge considered that the Defendant had not exercised his rights. Looking at the judge's overall consideration regarding the proof of the arguments in the opposition submitted by the Opponents.

The purpose of submitting resistance to Sita Execution is essentially to delay the execution; canceling the execution by declaring that the decision to be executed is not binding; reduces the value of the amount to be executed. In principle, resistance does not delay the execution of the judge's decision. Postponement or suspension of execution can be applied if the resistance is based on Article 207 HIR/225 RBg which is adjusted to the casuistic principle and the principle of exception. Regarding the provision, the judge after considering the course of the trial and the absence of efforts to carry out the execution and based on Article 283 Rv, the provision is rejected.

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16 Trivena Gabriela Miracle Tumbel (et. al)., *Perlindungan Konsumen Jual Beli Online Dalam Era Digital 4.0, Lex Et Societatis* 8, No. 3 (2020): 93-105

17 Nugrohandhini, Dwi & Ety Mulyati., *Akibat Hukum Gugatan dan Perlawanan Terhadap Lelang Eksekusi Hak Tanggungan, Jurnal Bina Mulia Hukum* 4, No. 1 (2019): 35-51.

18 Hassanain Haykal, Theo Negoro., *One Number One Citizen in Indonesia: Solution for Problematic in Court Execution Issues, Dialogia Iuridica* 14, No. 1 (November 2022): 146-170

19 Azizah Kamilah Putri (etc)., *Judicial Study: Parties' Opposition (Partij Verzet) in Proceedings to Execute Land Ownership Rights Under Civil Procedure Law, Justisi* 10, Issue. 3 (September 2024): 751-769

During the trial process, both in the examination of written evidence and witness statements submitted by the Opponent to strengthen his arguments, the judge decided to grant the Petitioner's petitum in number 8 (eight). The judge in his considerations stated that the evidence submitted by the Opponent was appropriate. In addition, the judge was of the opinion that the objection submitted by the Opponents was reasonable because the object that had been seized was the wrong object.<sup>20</sup>

A decision containing an error in *objecto* does not have executory power so that its execution cannot be carried out (non-executable). As stated in Article 163 HIR/Article 283 RBg which states that anyone who claims to have a right, or in order to strengthen his right or to deny the right of another person, points to an event, is required to prove the right or event.<sup>21</sup> The existence of differences in land boundaries also results in differences in land area. Facing a disputed object in the form of a fixed object, which in this case is land where there is unclear boundaries or area, the judge should order a local inspection. Local inspection (*gerechtelijke plaatsopneming*) is a court hearing examination conducted at the location where the disputed object is located in order to see the condition or directly examine the object of the disputed goods. Local inspection (*gerechtelijke plaatsopneming*) is regulated in Article 153 HIR/Article 180 RBg and Circular Letter of the Supreme Court Number 7 of 2001 concerning Local Inspection. The need for a local inspection (*gerechtelijke plaatsopneming*) is to clearly and definitely know the location, area and boundaries of the disputed object.

## **2. Legal Consequences Arising After a Civil Case Decision is Declared Unenforceable (Non-Executable)**

A case submitted by the Plaintiff to the Court has the aim of resolving the problem between the Plaintiff and the Defendant.<sup>22</sup> The end of a case examination in court is marked by the reading of the judge's decision. However, the passing of a decision does not mean the problem is over. Execution comes from the word *executie* which means carrying out the judge's decision. The decision must be carried out by the party who lost the trial. If the decision is not implemented voluntarily by the losing party, then there needs to be an execution process from the Court that decided the case.<sup>23</sup>

Basically, the law was created to provide trust to society, especially towards different interests. This is in line with Gustav Radburch's opinion that law in its achievement cannot be separated

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20 Rocky Marbun., *Kamus Hukum Lengkap*, (Semarang: Visi Media, 2012): 93

21 Hari Sasangka dan Ahmad Rifai., *Perbandingan HIR dengan RBG: Disertai dengan Yurisprudensi MARI dan Kompilasi Peraturan Hukum Acara Perdata*, (Bandung: Mandar Maju, 2005): 96

22 Marten Bunga., Mekanisme Penyelesaian Sengketa Melalui Gugatan Sederhana, *Gorontalo Law Review* 5, No. 1 (2022): 41-51

23 Mohammad Naefi and Dian Latifiani., Akibat Hukum Putusan Gugatan Sederhana Tidak Dijalankan bagi Para Pihak, *Pandecta* 16, No. 2 (2021): 335-344

from justice, certainty and expediency. The existence of law in question is both passive law (legislation) and active (judges in court). Meanwhile, the principles of justice, legal certainty and expediency in a decision handed down by a judge are basically a product of the court.<sup>24</sup>

The execution power of a court decision is the power to enforce what is applied in the decision by force by state apparatus. The judge's decision must be considered correct until there is a higher decision that annuls it. The judge's decision must be based on real justice, not mere procedural justice. In reality, many court decisions are considered not fulfilling the sense of justice. This is due, among other things, to insufficient evidence, so that in the giving a judge's decision based on such insufficient evidence cannot provide a sense of justice for the litigants.<sup>25</sup> The words "for the sake of justice based on the Almighty God" give execution power to Indonesian court decisions. This is regulated in Article 2 paragraph (1) of Law No. 48 of 2009 concerning Power.

Judicial Power with these powers, the decision or document can be executed and can be accounted for to God Almighty. The legal consequences that arise when a decision in a civil case is declared unenforceable vary according to the reasons and results of the trial. The legal consequences after a decision is declared unenforceable due to a decision being declared unenforceable on the grounds that the object or object of execution does not have ownership rights that cannot be executed are only temporary and do not end the defendant's obligation to fulfill his obligations, A decision that is declared unenforceable on the grounds that the object is mortgaged to a third party, then its execution can be transferred to another object that is not mortgaged, A decision becomes unenforceable if the object is abroad, execution can still be carried out if the applicant files a lawsuit with the District Court where the object is located, A decision that is declared unenforceable on the grounds that the land status has changed to state property must be stopped because by returning the land status to state property, the obligation to be executed ends. Execution must also be stopped if the boundaries of the land are unclear, the decision is declared unenforceable on the grounds that the object is in the hands of a third party, the decision is declarative in nature, the object is in the hands of the tenant, and execution of joint property, there are still efforts to ensure that the execution continues, namely by filing a new lawsuit, Two conflicting court decisions result in the decision not being able to be implemented, for this reason the effort that can be taken is a judicial review. While judicial authority is meant to serve as a check on non-executable decisions, its efficacy is frequently compromised by both political influences and the power of non-judicial institutions. This

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24 I Wayan Yasa and Echwan Iriyanto., Kepastian Hukum Putusan Hakim Dalam Penyelesaian Sengketa Perkara Perdata, *Jurnal Rechtsens* 12, No. 1 (2023): 33-48

25 Miftakhur Rokhman Habibi., Judgement, Legal Attempt and Execution of Criminal Law in Indonesia, *DE RECHT: Journal of Police and Law Enforcement* 1, No. 2 (2024): 56-69

highlights the need for clearer legislative guidance to ensure more consistent and effective judicial actions.<sup>26</sup>

Judex factie and judex juris have made mistakes in deciding on the disputed object. This problem occurred because from the beginning there had been differences in principles regarding land boundaries which also resulted in differences in principles regarding the area of the disputed object. Based on Article 231 RBg which states that if the resistance of the seized party is declared justified and therefore the seizure is revoked, then the person who has filed a seizure application, if there is a valid reason for it, is punished by replacing costs, losses and interest to the seized party.

#### **D. CONCLUSION**

The purpose of the research is to realize novelty regarding the judge's considerations in issuing non-executive civil case decisions and to analyze the legal consequences that arise after the civil case decision is declared unenforceable. The reason the judge stated that the civil case decision cannot be executed is because the land that has been placed under execution seizure is the wrong object, because the land has nothing to do with the case. The error in placing the execution seizure occurred because the judge who decided the case in his decision was wrong in determining the object of the dispute. The reasons for not being able to be executed are not regulated directly in the HIR/Rbg, the reasons are regulated in Book II, Edition 2013: Technical Instructions for Administration and Technical Procedures for General and Special Civil Courts. The legal consequences of a civil case decision that is declared unexecutable by the execution judge must be stopped on the grounds of error in objecto. A decision that contains an objecto error results in the decision losing its executive power, so based on Article 231 RBg, the judge must order that the execution seizure be revoked and then its status be returned to its original status.

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26 Achmad Ganis Poernomo, M. Sholehuddin., Execution of Non-Executable Court Decisions in Case No.757/Pdt.G/2022/Pn.Jkt.Pst, *Acitya Wisesa: Journal of Multidisciplinary Research* 3, Issue. 1 (2024): 50-60

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