EXISTENCE OF IMMEDIATE DECISIONS (UITVOERBAAR BIJ VOORRAAD) AND ITS EXECUTION IN THE CIVIL JUSTICE SYSTEM IN INDONESIA

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ABSTRACT

Objective: The legal basis for an immediate decision (Uitvoerbaar Bij Voorraad) in the civil justice system in Indonesia is very strong, namely in Article 180 paragraph (1) HIR/191 paragraph (1) Rbg, Article 54-Article 57 and Article 332 Rv. Then several SEMAs from 1964 to 2001.

Methods: The author's study was carried out using normative research (5), with a comparative legal approach, namely by implementing civil court decisions regulated in the Dutch Civil Procedure Code

Results and Conclusion: There have been many district courts that handed down immediate decisions, but the implementation of the executions experienced many obstacles, although some were successfully executed. In fact, the immediate decision and its execution are highly coveted by justice seekers, namely the plaintiff because it is very useful in accelerating the taking of his property rights unlawfully controlled by the defendant, as well as preventing and stopping the actions of the defendant continuously controlling the plaintiff's property without rights.

Keywords: immediate decision, execution, judiciary.

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EXISTÊNCIA DE DECISÕES IMEDIATAS (UITVOERBAAR BIJ VOORRAAD) E SUA EXECUÇÃO NO SISTEMA DE JUSTIÇA CIVIL NA INDONÉSIA

RESUMO

Objetivo: A base jurídica para uma decisão imediata (Uitvoerbaar Bij Voorraad) no sistema de justiça civil na Indonésia é muito forte, nomeadamente no artigo 180.º, n.º 1, HIR/191, n.º 1, Rbg, artigo 54.º-artigo 57.º e artigo 332.º Rv. Depois, várias SEMAs, de 1964 a 2001.

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Métodos: O estudo do autor foi realizado utilizando pesquisa normativa (5), com uma abordagem jurídica comparativa, ou seja, implementando decisões judiciais civis regulamentadas pelo Código de Processo Civil Holandês

Resultados e Conclusão: Houve muitos tribunais distritais que proferiram decisões imediatas, mas a implementação das execuções experimentou muitos obstáculos, embora alguns tenham sido executados com sucesso. De fato, a decisão imediata e sua execução são altamente cobiçadas por requerentes de justiça, ou seja, o autor porque é muito útil para acelerar a tomada de seus direitos de propriedade ilegalmente controlado pelo réu, bem como prevenir e interromper as ações do réu controlando continuamente os bens do autor sem direitos.

Palavras-chave: decisão imediata, execução, judiciário.

1 INTRODUCTION

The legal basis for implementing court decisions in civil cases is regulated by Law Number 48 of 2009 concerning Judicial Power in Article 54 paragraph (2) Implementation of court decisions in civil cases is carried out by clerks and bailiffs led by the head of the court. Article 54 paragraph (3) Court decisions are carried out with due regard to human values and justice.

Article 55 paragraphs (1) and (2) state: The head of the court is obliged to supervise the implementation of court decisions that have permanent legal force and supervision of the implementation of court decisions as referred to in paragraph (1) is carried out in accordance with statutory regulations. Based on Article 50 of Law no. 8 of 2004 concerning Amendments to Law no. 2 of 1986 concerning General Courts states that the District Court has the duty and authority to examine, decide and settle criminal cases and civil cases at the first level. This article has not been amended by Law no. 49 of 2009 concerning General Courts.

One of the main objectives of judicial development is the implementation of a judicial process that is fast, at low cost, and fulfills a sense of justice for all citizens so that judges have the freedom to examine and decide cases, free from interference from the community(Hamad and Al-Sarraf, 2023), executive and legislative. It is hoped that judges will be able to make decisions based on applicable law and also based on their beliefs that are as fair as possible and provide benefits to society. Thus, law and court bodies will be able to function as a community mobilizer in developing law and fostering legal order . (Kusumaatmadja, 1976)

The Supreme Court of the Republic of Indonesia as the highest judicial authority implementing body oversees 4 (four) judicial bodies under it, namely the general court, religious court, military court, and state administrative court. The Supreme Court of the

Republic of Indonesia has deter.mined that a judge's decision must consider all aspects that are juridical, philosophical, and sociological in nature, so that the justice to be achieved, realized, and accounted for in a judge's decision is justice. (Huabil *et al*., 2022)besides that justice must be based on values in society such as, legal justice, moral justice, and social justice (Rifa'i, 2010). In 2019 to build and develop the execution of court decisions for more than 2 weeks, ten delegates from Indonesia conducted Comparative Studies to several countries in Europe to Build an Efficient Civil Execution System.

Field studies were carried out in three countries: Germany, Italy and the Netherlands. Field studies were carried out among other things to find out: the concept of executing civil decisions, both court decisions and decisions of quasi-judicial institutions; executing agency and its position in the state administration system; civil procedural law and internal regulations of the executing agency that support and hinder execution; the forms of civil decision execution in the three comparator countries mentioned above; and execution constraints that occur in practice.

In the Dutch civil procedural law regarding one form of court decision, namely an immediate decision, it is stated that: Immediate execution is sometimes described as "execution without an enforcement order". The right of immediate execution rests, among others, with the lienholder (by Art. 3:248 of the Dutch Civil Code) and the mortgagee (by article 3: 268 Dutch Civil Code) (Rifa'i, 2010)

In the civil procedural law that applies in Indonesia, it is then followed up with SEMA and Supreme Court Instructions which actually have provided a solution for how to overcome the civil court process which is very long and requires a lot of money. The solution is an immediate decision (Uitvoerbaar bij Voorraad), but in practice this instant decision does not work as expected by justice seekers in fighting for their property rights which are controlled by the opposing party. This legal problem is what the writer wants to analyze in this paper.

2 METHOD

The author's study was carried out using normative research(Muhjad and Nuswardani, 2012), with a comparative legal approach, namely by implementing civil court decisions regulated in the Dutch Civil Procedure Code to open insight and sharpen the issues discussed.

The approach used by the authors of the several approaches above is the statutory conceptual approach (conceptual approach), approach (statute approach), and comparative approach (comparative approach)

3 ANALYSIS AND DISCUSSION

In the practice of civil justice in Indonesia, it is often predicated that the process has been going on for quite a long time, so that the parties have died and the case is continued by their heirs. This is very profitable for the Defendant who deliberately controls the Plaintiff's property unlawfully. Compared with Decision No. 30/Pdt.G/2000/PN Sda, November 20, 2000, only within 1 year and 7 days after the lawsuit was filed at the Sidoarjo District Court, the Defendant was able to regain his property rights controlled by the Defendant against law through the Uitvoerbaar Bij Voorraad decision.

The existence of instant decisions in the practice of civil cases in Indonesia continues to show their existence which is urgently needed by justice seekers to cut off the very long trial process if it is decided by an ordinary decision, In addition, the judge's consideration in deciding a case must be based on evidence that is strong enough to be considered by the judges in deciding a case(Hung, Thinh and Phuong, 2023). This is clearly seen in the author's second research in 2013 by conducting research on lawsuits that were decided by an immediate decision from 2006 to 2013 (Table III). As a continuation of the research question in 2005 (Table I) it was added to another study at the District Court which was known to have decided with an immediate decision. Interestingly, in the period from 2010 to 2012 the existence of instantaneous decisions increasingly shows us all that justice seekers, especially plaintiffs whose property rights are controlled by the Defendant unlawfully, really want their lawsuit to be decided with an instant verdict. Therefore, the existence of instantaneous decisions in the civil case justice system in Indonesia must be maintained by correcting all deficiencies that arise both in making decisions immediately, especially in carrying out their execution.The District Court of Cibinong, West Java, is one of the districts supporting Jakarta as well as the District Court which is the most consistent and has the most in making decisions immediately as seen in the following decisions (4-12):

a. Number: 75/Pdt G/2007/PN.Cbn, decision date : October 10 2007

b. Number: 152/Pdt.G/2008/PN.Cbn, decision date: 19 November 2009

c. Number : 36/Pdt.G/2009/PN.Cbn, decision date: 2 November 2009

d. Number : 144/Pdt.G/2009/PN.Cbn, decision dated: 22 April 2010

e. Number : 76/Pdt.G/2010/PN. CBN, decision date: March 24 2011

f. Number : 165/Pdt.G/2010/PN.Cbn, decision dated: 9 May 2011

g. Number 01/Pdt.G/2011/PN.Cbn, decision dated: 30 May 2011

h. Number : 155/Pdt.G/2011/PN.Cbn, decision dated: 19 July 2012

i. Number :08/Pdt.G/2012/PN.Cbn, decision dated: 19 September 2012

The West Jakarta District Court has rendered an immediate decision in case No. 469/Pdt.G/2006/PN JKT.BAR on May 16, 2007 in the case of renting a room located in the hall on the first floor of the Block J building, Tarumanegara University Campus, with an area of more or less 3120 m^2. This case started with the attitude of the tenant, Drs Hengki Idris Issakh MM, who had rented one of the rooms in the building and after the lease ended on November 30 2006, the tenant did not want to vacate the building he was renting. Instead, the tenant sued the building owner at the West Jakarta District Court. The Panel of Judges in their decision dated May 16 2007 No 469/Pdt.G/2006/PN JKT BAR, the verdict reads as follows:

JUDGE

IN COMPENSATION

IN EXCEPTION•

- Refuse Exception Defendant entirely DALAMIOKOKYERKARA
- Refuse lawsuit Plaintiff For entirely

IN RECOVERY

IN PROVISION:

- Refuse demands Province from Plaintiff Reconciliation

Basic Suit:

a. Granted the Plaintiff's claim for counterclaim in part;

b. Declare that the Defendant in Counterclaim has committed an unlawful act;

c. Declared the Defendant's Mastery of Counterclaim over part of the first-floor hall hall of the Block J of Tarumanegara University Campus I which has an area of approximately 31,20 M^2 since December 1, 2006 is tons 110k;

d. Declare the rental relationship between the Plaintiff and Counter-Defendant based on the lease agreement No. 25 dated 24 October 2005, drawn up before Benny Notary in Jakarta and expired on 30 November 2006;

e. Punish the Counterclaim Defendant or other parties who have the power of attorney and rights from him to vacate and hand over in an empty condition to the Plaintiff Counterclaim the room rented located in the first floor hall of the Tarumanagara University Campus 1 Block J building with an area of approximately 31,20 M^2 along with the keys;

f. Declare the validity and value of the Collateral Seizure that has been placed based on Decree No.469/Pdt.G/2006/PN.JKT.BAR, dated 12 April 2007, and has been carried out based on the Minutes of Collateral Seizure No.469/Pdt/G/2006/ PN JKT.BAR, dated 16 April 2007, for a portion of the first floor hall hall of the building Block J. Campus I Tarumanagara University, with a size of + 31.20 M2 as stated in the rental agreement No. 25 dated 24 October 2005 made before Notary Benny Djaja, SH;

g. Punish the Defendant Counterclaim to pay forced money (Dwangsom) in the amount of IDR 500.000 per day if the Defendant Counterclaim fails to comply with the judge's decision which has permanent legal force (inkrach van gewijsde);

h. Declare that this Decision can be carried out beforehand even though there are efforts of resistance (Verzet), Appeal, Cassation (Uitvoerbaar bij Voorraad);

i. Rejecting the counterclaim for the other and the rest;

3.1 COMPENSATION AND RECOMMENDATION

Charge the Claimant/Defendant Counterclaim to pay court costs of Rp. 739,000 (seven hundred thirty nine thousand rupiah); According to the author, this case is interesting because the tenant who insisted on renting a room in the building owned by Tarumanegara University and did not want to vacate the room he rented even though the lease had ended, even sued the building owner, but the judge who examined and tried and decided on the case concluded that the tenant the naughty person (the plaintiff) must vacate the room he rented because it is against the law, instead the judge declares a

counterclaim from the plaintiff counter with an immediate decision on 16-May-2007 because his claim has fulfilled the requirements referred to in Article 180 (1) HIR jo SEMA No. 3 of 2000 and article 1338 of the Civil Code.

Then the Plaintiff in Counterclaim (the building owner) submitted a request for the execution to the High Court on June 13, 2009 accompanied by the judge's opinions and a brief chronological description of the contents of the decision. Finally, on June 27, 2007 the Head of the Jakarta High Court gave permission or approval to carry out the execution with due observance of SEMA No. 3 of 2000 Jo SEMA No. 4 of 2007.

Based on the agreement with the Head of the Jakarta High Court, the Chairperson of the West Jakarta District Court issued a request for execution dated 1 August 2007 No 43/2007 Eks.J0 No 469/Pdt.G/2006/PN JKT BAR by ordering the summons for the execution of the defendant to carry out the District Court's decision. who requested the execution of Aanmaning or a warning from the Chief Justice of the District Court finally on August 21 2007 the respondent for execution was willing to vacate the object of execution by making a letter of agreement to empty it signed by both parties. In this case the execution was carried out voluntarily by the party the respondent executed without any coercion to be submitted to the applicant for execution. So the Head of the District Court only submitted the results of the execution to the Head of the High Court according to his letter dated 20 October 2007.

In conclusion, the decision is immediate: the lawsuit was filed on November 27 2006 and was terminated on May 16 2007 with an immediate decision. Subsequently, on May 16, 2007, he was executed on August 27, 2007, although the defendant used appeals or cassation, so in just 9 months since the lawsuit was filed at the West Jakarta District Court, the owner of the disputed object was able to regain control of his property rights which were controlled by the defendant's execution unlawfully.

The execution of the civil decision was immediately carried out successfully. A civil court process like this will create high satisfaction for the owner of the goods that are the object of execution while at the same time creating a fast, simple process with low costs.

The Depok District Court which examined and tried judicial case No. 63/Pdt.G/2012 on November 5 2012 has rendered an immediate decision in an inheritance claim, which was followed up with a request for execution By the applicant on February 14 2013, then the Head of Court Depok District after giving its legal opinion for the

decision, then wrote a letter to the Head of the Bandung High Court asking for permission to approve the execution by attaching the court decision and legal opinion according to the letter dated 19 February 2013. In February 2013, he issued an approval letter to carry out the execution of the decision immediately, which is now just waiting for the right day to carry out the execution according to the Head of the Depok District Court.

The courage of the West Jakarta District Court to render a decision immediately and then carry out its execution in accordance with the opinion of the Chief Justice of the Supreme Court which was conveyed in the general discussion of the Supreme Court Priority Discussion Program on March 25 2013 which essentially states: The important thing for the defendant is that their case can be executed quickly at low cost so that they can state legal certainty regarding the disputed object (Ali, 2013)

In case No. 559/1Y11.G/1999/PN Jakarta Pusat which was decided by decision immediately on February 29, 2000 and upheld at the appeal level in accordance with the decision of the Jakarta High Court No. 379/Pdt/2000/PT DKI dated August 24, 2000, then in cassation level according to cassation decision No: 3553k/Pdt/2000 dated 29 April 2002. Not only strengthened the decision of the High Court, but also stated that this decision could be implemented first despite an appeal, resistance or cassation (Uitvoerbaar Bij Voorraad). The losing party uses judicial review remedies. Although the judicial review decision No 301K/Pdt/2003 dated 26 October 2009 rejected the request for judicial review from the applicant for judicial review.

According to the authors of several District Court decisions, some of which have been executed immediately, while others are still in the execution process after obtaining permission from the Head of the local High Court. Likewise the decision of the Central Jakarta District Court No. 579/Pdt.G/2009/PN.Jkt.Pst dated 29 February 2009 which was decided by decision immediately and strengthened in the decision of Appeal, Cassation and Judicial Review.

This proves that the existence of an Immediate Decision in the Civil case system in Indonesia is very strong, because it not only includes a fast, simple and low-cost Judicial process but can also reduce the accumulation of cases in the Supreme Court which are increasing.(Mappong and Lili, 2023) day by day and especially can create authority and public trust in the Indonesian judiciary which is fast, simple and low cost but can also reduce the piling up of cases in the Supreme Court which are increasing day by day and

especially can create public authority and trust in the Indonesian judiciary. Supreme Court of the Philippines, namely:

> Consequently, the Court finds and so holds that in a civil case which was decided under the Rules of Summary Procedure, the immediate execution of the judgment of the Regional Trial Court may not be effected unless prior notice of the judgment or order has been served on the losing party and proof of such service accompanies the motion for execution of the judgment. This will enable the losing party to take any appropriate steps to protect his interests when warranted. The losing party is entitled to such notice as an essential requirement of due process; otherwise, the entire proceedings leading to the execution of the judgment may be nullified and set aside

4 CONCLUSION

The immediate decision and its execution for the plaintiff are of great significance, however, in practice problems often arise, if at a later date during an appeal, cassation and judicial review examination, this decision is immediately annulled, whether the plaintiff's claim is rejected or declared unacceptable. In such circumstances everything that arises as a result of the execution of the decision must be immediately restored to normal, but the civil procedural law that exists in the HIR as well as in the Rbg and other laws has not yet regulated it. In practice, there is often chaos in the recovery of the execution of decisions and results in delays in recovery for years.

According to the author, in order to maintain the authority of the judiciary and the rule of law, SEMA No. 3 of 2000 in conjunction with SEMA no 4 of 2001 amended and published in PERMA so that it reads as follows. To carry out the decision, the applicant immediately makes a statement stating that the object of goods to be executed shall be used as collateral, and will not be transferred in any form, but already in the power of the applicant, so as not to cause harm to the party being executed, if it turns out that in the future a decision is made which cancels the decision immediately and the statement must be contained in the decision letter of the Head of the District Court and recorded in a special register book, for this it is the same as the list of objects confiscation in civil cases, the statement must also be included in the minutes of execution. After the guarantee statement is issued, the Head of the District Court requires the applicant again to deposit the bail amount, the amount of which is left to the discretion of the Head of the District

Court taking into account ng the economic capability of the applicant as referred to in SEMA No. 6 talıun 1975 letter b number 3 (league).

This solution is expected not to harm the executed party and is very beneficial or beneficial to the plaintiff or executor, because it can immediately control its property rights that are controlled by the defendant or the execution respondent although they may not transfer it to another party before the case has permanent legal force and only makes a statement that the object of the dispute is used as a guarantee of execution plus a guarantee of money, the amount of which is determined by the Head of the District Court based on the ability of the plaintiff seeking execution, while bail is not required, if the execution of a decision is necessarily a lawsuit based on another decision that has permanent legal force, for example a a decision that has permanent legal force, but is declaratory in nature, cannot be executed, because only decisions that are condemnatory in nature can be executed.

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