

Discretion in Execution of Civil Law That Legally Binding

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ABSTRACT: The purpose of this study is the first to obtain accurate data in terms of discretion in the execution of civil decisions that have permanent legal force secondly to provide an overview of the role of State tools in terms of discretion in the execution of case decisions that have permanent legal force third to analyze the factors affecting discretion on legal decisions that have permanent legal force. This type of research is qualitative research, where data are collected using documentation techniques, surveys and open interviews, data are analyzed by Qualitative analysis, where the data collected is processed, reduced and finally presented. The results of the study show that firstly, by the existence of discretion in the execution of the case decisions that have permanent legal force from the district court appointed by the Interpreter as the stipulator in the execution, they must be ready to carry out their duties and be assisted by State apparatus. Second. The Role of State Apparatuses in terms of securing executions needs to be measured assertiveness and acting in accordance with applicable regulations and cooperation with existing Agencies in the field. Third With the factors affecting discretion in the execution of civil case decisions that have permanent legal force for a chairman the court that assigns a bailiff must be brave and firm in taking action in the field and his main task is to read the decree from the president of the court.

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I. INTRODUCTION

Legal power must provide certainty about the rights possessed by the winner which is realized through the implementation of a decision (voluntary or execution) owned by the winner of the case may be delayed or stopped because of various things both on the decision itself, or on the executor of the decision or other circumstances that occur when the execution will be carried out.

It is possible that several things were encountered in the process of executing a civil case in the field, for example in the execution of a family case regarding the absence of a mechanism capable of ensuring the payment of the living of the child and/or the livelihood of the wife by the defendant. Besides, no mechanism binds third parties (agencies where the application works) to ensure the execution of the payment of livelihood by the absentee respondent.

Judges' decisions are *not-executable*, partly because the decision was *declaratory* and constitutive; the goods to be executed are not in the hands of the request for execution; the goods to be executed are not by the goods mentioned in the court decision.

The obscurity of the petitioner's object is the difficulty in determining the boundaries of the land be executed. Another possibility is because the object of the case has been transferred to someone else's hands, which was only known at the time of the execution issue. Meanwhile, if the object of the dispute has changed hands to a third party, the court must consider and protect the interests of the third party in good faith. culture becomes something that cannot be ignored. the defendant who does not want to execute the court's decision voluntarily will try to defend the object of the dispute by all means.

Other problems that might occur are seen as having other impacts. The conditions mentioned above make execution delayed or not carried out in an undetermined tempo, because it is based on conditions and situations that exist in the object of execution.

Burhanuddin stated that the situation which caused the execution to be delayed or not carried out stated that: In reality, it is not uncommon to find court decisions that were not carried out or realized voluntarily by the defeated party, then the losing party did not accept the verdict despite having obtained legal force. still has an interest in the case that has been decided this means that the defeated party does not want to carry out the decision and does not want to fulfil the interests of the party won so that the decision is carried out and the interests of the party won fulfilled by the defeated party is by force by the court or by force execution. With the

decision of the judge, the losing party (executed) feels disadvantaged or even indeed harmed so that the loser can make legal remedies that are entitled to claim their rights with extraordinary legal remedies.¹

In the interests of security, the court as the execution of the execution usually consulted with the security of the State apparatus from the police so that the execution carried out can run smoothly.

State instruments are seconded to the court for security purposes so that the execution can run smoothly as expected by the winner, but the District Court in carrying out its task of carrying out the execution sometimes get obstacles in the field. So that sometimes delaying the execution of certain considerations.

In the execution of executions in the field often encountered resistance from the execution, because the party who was executed did not feel satisfied with what had been decided by the court. as stated by Muhindar that: Resistance (*Verzet*) the execution party is an effort of direct resistance coming from the party that is executed or in other words who feel aggrieved over the judge's decision that has been complied with by the judge whether it has permanent legal force or not. The purpose of resistance to execution is as follows: (1) To delay (2) Cancel the execution by stating the decision to be executed is not binding. (3) Reducing the value of the amount to be executed.²

The resistance carried out is aimed at thwarting the execution, but this depends on the bailiff ie smoothing the execution or delaying the execution of the court.

Likewise with the State tools that are seconded to safeguard the execution, if an obstacle occurs on the ground, it must always coordinate with the bailiff exist in the field for the sake of execution is the work of the State administration attached to the judiciary so that in the execution of executions it can happen/carry out State administrative actions in the form of discretion.

Discretion carried out in the execution will still refer to the laws and regulations, namely Law No. 30 of 2014 concerning Government Administration to provide space for government officials in conducting a discretion. This Law regulates the issue of discretion or Decision and/or actions that are determined and/or carried out by Government Officials to overcome concrete problems encountered in the administration of government in terms of laws and regulations that provide choices, are not regulated, incomplete or unclear, and/or government stagnation.

Such discretion includes a). Decision making and / or action based on the provisions of the legislation that provides a choice of decisions and / or actions, b). Decision Making and / or Action due to statutory regulations do not regulate, c). Decision Makers and/or Actions because the laws and regulations are incomplete or unclear, and Decision Making and/or Action due to the stagnation of government for broader interests.

II. DISCUSSION

As the final part of this paper, several general case problems that are estimated to be often found in reality will be discussed. It is certainly not possible to direct all types of cases. No matter how closely you observe, it is impossible to record all types of cases. This impossibility is compounded by the nature of the development of the case itself in people's lives. In realism, we are dealing with a hypothesis that teaches that cases faced by people in any field are "dynamic". Likewise, the case arises in the field of execution. When talking about the matter of execution, of course, many opinions of experts, one of them according to R. Subekti he stated that: Execution is imposed on the losing party who does not want to obey the decision voluntarily so that the decision must be forced on him with the help of legal force.³

In its development, of course, when it comes to the issue of execution, it will certainly start with the dispute legal process and end with a decision that has permanent legal force, and the most decisive is the existence of a decision dictum that must be by the decision in court.

One Registrar from the Takalar District Court on May 20, 2019 named Irfan FahrudinSyam SH N.Kn said that: With the decision being legally binding and there was no resistance and even the dictum of the verdict was by the decision which was decided by the court, certainly from the party the loser will follow the verdict and instructions of the head of the court but vice versa if the loser does not heed the judge's decision then will be enforced.⁴

Consequently, there will be several cases which are deemed to often hamper the completion of the execution. Hopefully, the description of the case description can be used as a guide to handle various execution problems.

¹ Burhanuddin, *Proses Pelaksanaan Eksekusi* handitengah-Tengah Masyarakat Penerbit PT RinekaCipta, Bandung 2013, pp 4

² Muindar, *Permasalahan-permasalahan Eksekusi*. penerbit RinekaCipta Bandung. 2014, pp.45

³ Dikutip dari Mochammad Djais .Pikiran Dasar Hukum Eksekusi. Semarang Fakultas Hukum Universitas Diponegoro. 2000, pp.12

⁴ Interview with Peneliti Panitera PN Takalar Irfan FahrudinSyam SH N,Km, May²⁰, 2019.

The basis of execution refers to the *Amar* (dictum) of the court's decision. This is a principle that must be obeyed by all parties. Execution to be carried out by the court may not deviate from the verdict. This principle is a benchmark that must be obeyed so that the execution carried out does not exceed the limits of authority. Try to imagine that the execution carried out does not refer to the verdict, it can lead to arbitrariness and rape of the party executed or the party requesting the execution. If this principle is not used as a benchmark, there can be freedom by executing all the assets of the defendant who are not included in the dispute. Or conversely, execution can harm the interests of the plaintiff (the Petitioner for execution), by giving less than what he won.

If so, the principle of execution by the verdict functions and serves as the referee of the upright steering of legal certainty in execution, and at the same time as a means of supervision and correction for all parties involved in the execution concerned. Executed parties have the right to refute and correct the execution that is not by the ruling. Likewise, the Petitioner has the right to correct execution, if what is carried out by the court is less than what is stated in the decision of the ruling, even a third party can take action against the execution that is not by the ruling, if it violates their rights and interests⁵.

Humans most often reject reality. Especially if the reality is bitter. This is often found in the act of carrying out executions. Almost every execution refuses the execution, even if it is carried out exactly by the verdict. A thousand kinds of reasons were put forward to impede execution. Even though the verdicts were very clear and detailed, and the executions were actually by the verdicts, but some executions did not want to understand. Making accusations of execution carried out is not by the decision of the ruling.

What is the attitude of the court is facing such cases? Should the execution be stopped? Cannot be stopped! The refusal of the proposed execution was executed for the reason for the execution. What was intended or that was carried out was not by the verdict:

- Cannot be used as a reason to postpone or stop the execution.
- Therefore, the execution continued: and
- if the executed party still objected;
- He can put forward resistance
- , however, the resistance itself does not hinder and delay execution.

That way the implementation of the execution in the state of the execution party refuses execution for reasons not by the decision. Of course, the court which is most first to correct itself, in the sense of whether or not there is a refusal from the party executed for reasons of execution is not by the verdict. The court is obliged to examine and ensure that executions that can be carried out or that are ongoing are stable or by the verdict. The authority of the court to carry out the execution even if there is a refusal from the party to be executed must be balanced with an attitude of accuracy and openness concerning the application:

- Check and understand as precisely as possible the verdict of the decision: and
- if there is a mistake, the execution must be returned in the direction parallel to the sound of the court decision.

If the court is convinced, the execution is appropriate with the verdict, the refusal submitted to be executed must be set aside and the execution of the road continues to such refusal, cannot be used as a reason to delay or replace the execution. If such an excuse may be the basis for a delay or replacement of execution, no execution can be carried out. Because it can be expected, no execution wants to let his property be executed. Almost every person affected by the execution tries to refuse the execution, even if it is carried out exactly according to the verdict. Especially for cunning executives. Looking for various excuses to thwart the execution. Especially if such refusal is justified in delaying or stopping the execution, the reason will be used by the executors. This basis is the legal reason,

postponement or cessation of execution solely for objections raised for execution, that the execution is not by the verdict. Let him be executed filing a rejection on the grounds of execution not by the ruling. However, the refusal did not delay or stop the execution. If the execution is still noisy, encourage you to file a resistance suit. But even though he did put forward a fight, the lawsuit was not the reason for the delay or replacement of the execution. Because, if the resistance is justified to delay or stop the execution, it will be used every time it is executed to thwart the execution. That is why the law does not justify resistance as an excuse to delay or stop the execution.

The course of a judicial process will end with a Judge's ruling. In this case, the Judge first determines the facts (events) which he considers to be true and based on the truth obtained, then the Judge can only apply the applicable law between the two parties in dispute, namely establishing a "legal relationship".

⁵ Yahya Harahap SH RuangLingkupPermasalahanEksekusiBidangPerdataPenerbitSinarGrafika 2005 Jakarta

In connection with the judge's decision, it is still divided into several types, one of which is a decision, namely a decision that is written and pronounced during a court session precisely in the courtroom. In full, Mardiono argues that:

Judge products from the results of case trials at the trial are available 3 (three) types, namely decisions, decisions and deeds of peace. Decisions are judges' statements that are outlined in written form and pronounced by judges in a hearing open to the public as a result of examining litigation (contingent) cases. Determination of decisions of judges' statements outlined in the form of judges written and pronounced by the judge in a hearing open to the public as a result of examining the case for a petition (voluntary). While the peace deed is a deed made by the judge that contains the results of deliberations between the parties in the dispute to end the dispute and act as a decision⁶.

From the explanation above regarding the verdicts which were decided by the judge and binding on both parties to the litigation which was confirmed by the factors influencing the discretion in the case decision which had legal force remains one of the Registrars in the Sidenreng Rappang court on June 13, 2019 named Mastur SH said that with the dictum in the case verdict that has permanent legal force, both parties that have a decision from the court that has Inkra, then both parties have a legal binding⁷.

Another case stated by one of the Registrar of the Takalar court named Fahrudin SH who had met with the researcher on May 20, 2019 stated that: With the existence of factors that influence the discretion of the execution of civil case decisions that have permanent legal force, as long as there is a dispute in question or there is a mistake that there will be a problem or turmoil in the field so that there will arise a discretion from the district court while always coordinating with the Nagara tools (security).⁸

Decisions in court are divided into several types, namely:

1). Interlocutory Verdict is a verdict handed down before the final verdict is held to enable or facilitate the continuation of the case investigation. For example, the interlocutory decision of the District Court regarding the exception of the inability of the court to hear a case. In the Civil Procedure Code, there are several interlocutory decisions, namely preparatory, interlocutory, incidental, and provisional.

a. Preparatory Decision is a decision of a trial regarding the course of the examination to smooth everything to make a final decision. For example, a decision to refuse the resignation of a witness examination.

b. Interlocutor Verdict is a decision whose contents order proof. For example, decisions to examine witnesses or local examination. Because this ruling involves a matter of proof, the interlocutory ruling will affect the final

c. ruling of the Incidental Verdict is a ruling relating to incidents, ie events that stop ordinary judicial procedures. Even this decision is not related to the subject matter, such as a decision that allows someone to take part in a case (vrijwaring, voeging, and tussenkomst)

d. Provisional Decision is a decision that responds to the demands of the provision, namely the request of the litigant to carry out preliminary actions in the interest of one of the parties before the final verdict is handed down. For example in divorce cases, before the main case is decided, the wife asks to be released from the obligation to live with her husband.

2). The final verdict is a decision that ends a civil case at a certain level of examination.

Soeparmono stated that the decision was a statement of a judge as a state official who carried out the duties of the judicial authority that was given authority for that which was pronounced in court and aimed at resolving the problem.⁹

From the above explanation, one of the security officers (state equipment) from Makassar Polrestabes on May 27, 2019, a researcher who met, named Ipda Herman Batu said that: for the decision of execution that has the power of law to remain as long as the verdict is by what was decided in court, the resolution of the problem must be resolved. not too complicated because what is expected for the winner in a dispute matches what is expected¹⁰.

The final decision according to the nature of its ruling (dictum) can be divided into 3 (three) types, namely condemnatory decisions, constitute decisions, and declaratory decisions.

a) Condemnatoir Verdict is a decision which is to punish the losing party to fulfil an achievement. The plaintiff's civil rights that he is claiming against the defendant are acknowledged by the judge. A ruling always reads "Punishing and so on "

⁶Mardiono. *Putusan Hukum*. Penerbit PT Swastika Agung Bandung 2013, pp.12

⁷Interview with Panitera PN Sidrap Mastur SH June¹³, 2019

⁸Interview with Panitera PN Takalar Fahrudin SH May²⁹, 2019

⁹Soeparmono. *Hukum Acara Perdat Yurisprudensi*, Bandung Mandar Maju 2005, pp.146

¹⁰Interview with State instruments Polrestabes Makassar IPda Herman Batu May²⁷, 2019.

b) Constitution Decisions are decisions that create a new legal situation. For example, decisions that cancel an agreement, declare bankruptcy, terminate a marriage contract, and so on. The verdict read: "Declare ... and so on."

c) Declaratory Decision is a decision which states a condition as a legal condition. For example, the agreement between the plaintiff and the defendant is declared valid according to law and so on. The ruling always reads: "To declare ... lawful."

Of the three final decisions above, decisions that require implementation (executive) are only final decisions that are condemnatory, while the other final decisions only have binding power.

3). The decision of Death is a decision which states that a claim/application was cancelled because the plaintiff/petitioner was absent. In connection with this verdict, two terms are known, namely:

a) The Verstek / Inabsensia Decision is a decision handed down because the defendant/respondent is absent even though he has been formally called. Verstek verdict can be handed down if the conditions have been met, namely:

- Defendant has been called officially and properly.
- The Defendant did not attend the hearing and did not represent anyone else nor did it turn out that his absence was due to a valid reason.
- The Defendant did not submit an objection/exception concerning authority.
- The Plaintiff was present at the hearing
- Plaintiff requested a decision.

b). Contradictory Verdict is a process of hearing before a judge, namely an examination of a case that is carried out normally through the stages of a lawsuit, the stages of answer (first answer, replica, duplicate, and further conclusions), the proof stage, and concludes with the final decision stage. called the contradictory verdict, although it does not provide resistance in the form of recognition of the plaintiff's arguments.

From the above statement, we can conclude that with the decision dictum on factors that influence discretion in the execution of civil case decisions that have legal force remains the opinion of the court clerks, advocates and the police itself that with the decision dictum that is by the demands and there are no obstacles, and there is no resistance then discretion from the court is not necessary and the execution continues according to the existing rules, and vice versa, if the decision of the decision is not by the facts in the field, means there will be a problem or turmoil in society.

III. PHYSICAL RESISTANCE

In a decision that has the legal power, there is nothing left to chance in it, just waiting for the mechanism or rules in court, meaning that the party wins in a case, of course, there are things that still need to be done, namely by asking the head of the court to execute as long as the losers in the dispute do not want to admit their mistakes or follow the verdict, it means that the head of the court summoned the person concerned as well as Manning.

And one of the researchers on 20 May 2019 met with the Registrar of the Takalar court named Fahrudin SH stating that: It is true if from the court has produced a decision that has permanent legal force, as the court clerk is just waiting for an order from the head of the court starting from requesting the winning party for execution until its coordination with the relevant agencies including state equipment including Police and military to ask for security assistance at the time of execution, depending on the losing party. If the party loses voluntarily means there is no resistance means there is no execution.

Fully realized that the process of execution on the ground, sometimes there are clashes between the two parties, where the losing party will make physical resistance that can cause casualties between the two parties, therefore security is needed, especially from State equipment (Police and TNI).

Discretionary measures carried out by the security forces are carried out because these actions can make effective the resolution of criminal acts, where the suspect, commits a criminal act when there is an activity in the field, especially when they have committed physical resistance which on one side of this discretionary action is an application of criminal law which is carried out by its policy to streamline the law that runs rigidly. While on the other hand, this action becomes a stumbling block for law enforcement authorities especially the security, where the way to act in the field must always coordinate with the court of discretion which is carried out depending on the field situation and the policies of the court itself. Thus the police need not only play a repressive role. In reality, the percentage of police work that is responsive is smaller than that of preventive nature¹¹.

The statement above justifies how the police act by the existing procedure, especially always

¹¹ Ahmad Ali .” *Polisi dan Efektivitas Hukum Dalam Penanggulangan Kriminalitas* " *Dalam Menjelajah Kajian Empiris Terhadap Hukum*. Jakarta PT Yasrif Watampone.1998, pp.221

prioritizing coaching to the community or when there is a physical defence in an execution activity in the community, and we always coordinate with the court.

As explained from the TakalatPolres State Police tool named IptuKamiseng on May 20, 2019, stated that: For the police in carrying out tasks in the field we always refer to the existing rules of the police SOP, we must carry out so before going down the field what we have to do then we do it according to the SOP that there is one example before the misfortune what to do. of course, we first prepare the troops means that the person to be dispatched to the task we provide guidance, an inspection of equipment. When it comes to giving directions, we explain what must be done in the field, and as leaders in security, we always direct coordination with the court, as well as our community, giving an appeal not to do anarchism¹².

In securing executions in the field if there is a physical resistance from the community or the losing party, they do not want to accept the defeat, certainly, in the field, there will be a problem, namely resistance.

From the state apparatus (the Police) in terms of acting certainly based on existing legal rules, namely based on Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia were acting according to discretion is owned: first for the public interest of the Republic of Indonesia National Police Officers in implementing his duties and authorities can act according to his assessment. Second, the implementation of the provisions referred to in paragraph (1) can only be carried out in a very necessary condition by observing the laws and regulations and the professional code of ethics of the Indonesian National Police Republic of Indonesia. This is in line with SatjiptoRaharjo who argues that: Law can only demand a common life together in general as soon as it regulates in detail, by providing a complete step-by-step scenario then life will get stuck because it is a complete set of legal systems itself,¹³

Along with the implementation of field duties of one of the policemen who served in the SidenrengRappang Regional Police who had met with a researcher on June 13, 2019 named Iptu Zakaria said that: there means we see something happening in the field and if we are involved in securing the execution of course always coordinate with the court.¹⁴

From some of the above opinions, it can be concluded that if in the execution of execution there is a physical resistance from the losing party because they are not satisfied with the results of the court's decision to fight and depend on the court's discretion with the police.

IV. EXTRAORDINARY LEGAL EFFORTS

In principle, only decisions of judges who have permanent legal force can be carried out, if they are not legally binding, they cannot be implemented in the field. A decision can be said to have permanent legal force if the decision implies a form of the permanent and certain legal relationship between litigants because the legal relationship must be obeyed and fulfilled by the defendant.

One of the jurists who provided explanations regarding issues related to legal decisions that have permanent legal force, namely Abdullan Muhammad, stated that: Decisions that have permanent legal force are decisions that according to the provisions of the law there is no more opportunity to use legal remedies usual to fight the decision, while the decision that does not have permanent legal force is a decision which according to the provisions of the law is still open the opportunity to use legal efforts to fight the decision, for example, verzet, appeal and cassation.¹⁵

From the above statement, it is explained that the court's decision which has legal force will still be reviewed and can be requested from the Supreme Court. As long as the decision does not yet have legal force, the reconsideration effort cannot be used. Against such decision can only be taken as a normal legal action in the form of an appeal or cassation and the judicial review will be open after the usual legal remedies (in the form of appeal and cassation) have been closed. reconsideration remedy may not bypass Appeals and Appeals.

On June 12, 2019 researchers met one of the Registrars from the Barru District Court named HJ. Normah SH said that: The issue of a review conducted by one of the parties to the litigation may be permissible or the rights of a litigant but it must be remembered that in the dispute certainly there are winners and there are losers, who win in a dispute, of course, the decision has been legally enforceable. Certainly, there are mechanisms that he has to work on, among others must refer to the execution of the losers not obeying the existing legal decisions of the losing party may submit a review as long as there is new evidence presented and it must be remembered that the review does not preclude execution.¹⁶

¹²Interview with State instruments PolresTakalarIptuKamiseng, May²⁰, 2019.

¹³SatjiptoRaharjo, *Masalah Penegakan Hukum, Suatu Tinjauan Sosiologis Hukum* Bandung, Sinar Baru 1983, pp.11

¹⁴Interview with State instruments Polres Sidrap Iptu Zakaria, June¹², 2019.

¹⁵Abdullah Muhammad. *Hukum acara Perdata Indonesia*. Penerbit Citra Aditya Bakti .Bandung, 2000.

¹⁶Interview by Panitera PN Barru HJ Normah SH, June¹², 2019

From the statement stated above that the review conducted by the litigation party always takes Appeals and Appeals and that can also be submitted to the Supreme Court after obtaining new evidence, and it is also necessary to pay attention to the problem when filing an Appeal or Cassation.

One Registrar from the SidenrengRappang court on June 13, 2019 who was met by a researcher named Mastur SH explained that; Any person who is litigant may submit an appeal or an appeal and even reconsideration, but must remember the time limit that has been determined, for example, if the appeal and cassation level is 14 days after the decision requested by the appeal is notified to the defendant. As the article is regulated in article 245 paragraph (1), as well as review, the law affirms the time limit. By the sound of article 264 paragraph (3) which confirms that the review is not limited to a period, at any time a request for reconsideration can be submitted¹⁷.

V. CONCLUSION

Discretion from the head of the court regarding the execution of an object, is the authority of the official in the field, in this case, the bailiff reads the letter of determination from the head of justice if there are obstacles in the field the bailiff still reports to the head of the court, and the discretion is determined chairman of the district court.

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¹⁷Interview by Panitera PN Sidrap Mastur SH, June¹³, 2019