

Enforcement of Court Decision Regarding Payment of a Sum of Money in Civil Disputes to Support the Ease of Doing Business in Indonesia

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Abstract

The judiciary plays a very important role in encouraging the progress of the ease of doing business in Indonesia because the judiciary is also affected by economic globalization. The Indonesian Supreme Court has issued several policies related to justice reform to provide the best services for justice seekers, especially in the case of a quick, simple, and inexpensive case resolution process to support the ease of doing business. However, the policy has not reached the final stage of enforcement of the decision, especially in civil disputes, related to payment of a sum of money. There is still a legal vacuum to trace the Respondent's assets, making it difficult for the Petitioner to obtain his rights after a court ruling ordered payment of a sum of money. Therefore, the Supreme Court needs to strictly regulate the authority and responsibility of tracing the Respondent's assets to facilitate the enforcement of decision for the fulfillment of the Petitioner's rights.

Keywords: Enforcement of Court Decision, Civil Dispute, Payment of a Sum of Money.

I. Background Issues

The role of the Indonesian government in supporting the implementation of a conducive economy, among others, is through changes and improvements to various legal rules relating to the business world. These changes are made to improve the rating of the Ease of Doing Business (EoDB), especially related to starting a business, protecting minority investors, and resolving disputes in court.¹

Improvement in the ease of doing business ranking is one of the strategic directions of development listed in the 2015-2020 National Medium-Term Development Plan. In 2016, the Government determined a plan to increase the business ease ranking in Indonesia from 109th to 40th in the Ease of Business Survey. This is carried out to foster domestic small and medium business sectors while simultaneously encouraging economic growth through investment.²

The judiciary plays a very vital role in encouraging the progress of the ease of doing business in Indonesia because the judiciary is also affected by economic globalization. Hilario G. Davide Jr. (Chief Justices of the Court of the Republic of the Philippines) argues that “Globalization is the economic movement of the future. The Global World offers many opportunities to achieve independent justice.³ Many countries, especially developing countries, must adapt and renew their justice systems due to the urgency of international needs, namely the entry of foreign (multinational) companies. This condition is suspected as one of the factors driving improvements in judicial instruments in developing countries, including in Indonesia.

Related to the above explanation, based on Article 4 of Law No. 39 of 2009 on Judicial Power, the Court will continue to be proactive in overcoming obstacles and hindrances for the achievement of a simple, fast, and low-cost trial.

In the context of contributing to improving the ease of doing business, the

1 Based on the result of the *Ease of Doing Business* (EoDB) Survey conducted by World Bank Indonesia, in the early of 2017 Indonesia is ranked 91st from 190 countries in the World, available at <http://doingbusiness.org/rankings>.

2 Peran Peradilan Dalam Meningkatkan Kemudahan Berusaha Di Indonesia, available at <http://pn-kepanjen.go.id/hubungi-kami/blog-pengadilan/2015-05-31-00-18-22/item/peran-peradilan-dalam-meningkatkan-kemudahan-berusaha-di-indonesia.html>.

3 Hilario G. Davide, Jr., *Comments on the Paper of Hon. Andrew Kwok Nang Li, Chief Justice of the Court of Final Appeal of the Hongkong Special Administrative Region of the People's Republic of China* (Sept. 8, 1999) (unpublished paper presented on the Conference of Chief Justices of Asia and Pacific, 18th Lawasia Conference).

Supreme Court has issued several policies that encourage the ease of business, such as the standard time for case resolution at all levels of court. In the court of first instance, the settlement of the case is shortened from 6 months to 5 months, and in the court of appeal is shortened to 3 months. Whereas the case settlement time at the cassation level was shortened from previously one year to only 250 days or 8 months. In addition, the Supreme Court also produced some rules related to Small Claim Court Settlement Procedures, which essentially provide a way for the settlement of civil disputes whose claim value is below IDR 200 million to IDR 500 million in a short time and a far simplified legal process, and several policies on modernized judiciary based on information technology in the form of e-filing and e-litigation.⁴

However, the support and commitment of the Supreme Court to provide convenience in the proceedings at the Court has not yet reached the issue of enforcement of the court's decision. In reality, not all losing parties want to voluntarily implement the decision of the ruling, so that assistance is needed from the state apparatus, in this case, the court, as the institution authorized to take actions to force the losing party to implement the ruling.⁵ The court action to force the losing party to carry out this ruling is called enforcement of a decision or, in Indonesia, is familiarly known as execution (hereinafter execution and enforcement of decision are used interchangeably).

There are several findings showing that some court decisions in civil disputes that have permanent legal force are very difficult to enforce.⁶ This means

4 Muhammad Hatta Ali, *The Role of the Judiciary in Improving the Ease of Doing Business in Indonesia* (March 7, 2016) (unpublished keynote Speech at a national seminar prepared by the Indonesia's Supreme Court and the Federal Court of Australia).

5 Herzien Inlandsch Reglement, art. 195, para. 1 (Indon.) and *Rechtreglement voor de Buitengewesten (RBg)*, art. 206 para. 1 stipulates that the enforcement of court decision (execution) of civil case decisions is carried out on orders and under the leadership of Chief Judge of a district court. Then Law No. 48 of 2009 on Judicial Power, art. 54, paras. 1 and 2 (Indon.) states that the enforcement of court decisions in civil cases is carried out by registrar and bailiffs and led by chief judge of the court who is obliged to oversee the enforcement of court decisions that have obtained permanent legal force. Furthermore, Law No. 7 of 1989 on the Religious Courts, art. 95 (Indon.) and the Supreme Court's Book II on *Guidelines for the Implementation of Duties and Administration of Courts in the Four Court Jurisdictions* also state that the chief judge of the court is obliged to oversee the perfection of the enforcement of court decisions that have obtained permanent legal force. These provisions emphasize that the execution of civil court decisions is carried out through the District Court or the Religious Court as a court of first level.

6 There are several examples of court decisions that have obtained legal force but cannot be enforced, such as in the case Number 64 PK/Pdt/2007 *jo.* Number 611 K/Pdt/2004 *jo.* Number 245/Pdt/2003/PT.DKI *jo.* Number 523/Pdt.G/2001 related to Maora land compensation, *Eigendom Verponding* Number 7267 in Karet Kuningan, South Jakarta. Since July 2008 this case has been legally binding until the final level of settlement i.e. case review, but until now the winning party of this case has not yet received their rights due

that the parties who won in settlement of the case dispute could not yet get their rights because they were constrained in the execution process.

The difficulty to obtain the rights as stipulated by the court decisions is certainly very influential on the economic use of the disputed object or asset. whereas the assets or objects in dispute are generally used as collateral to get a credit loan from the bank. Even the banks themselves have difficulty in selling or transferring these assets for credit recovery because they are still constrained by the matter of execution. This is contrary to the Supreme Court's policies to provide support for the ease of doing business.

It is thoroughly understood that the enforcement of a court decision is an inseparable part of the proceedings in the Court. Acts of execution are carried out against the losing party in a case in court if the losing party does not want to accept and carry out their obligations voluntarily. However, in general, the execution becomes a problem if the losing party or the defendant opposes the execution.⁷

The above conditions ultimately added to the length of the case settlement process and the high cost of the litigation process, which then impacted on the weak public trust in the judiciary. This is indicated by the lack of civil cases (including business contract disputes), which are lodged to the court, totaling approximately 20,000 cases per year.⁸

Therefore, this paper examines the fundamental problems on how the execution system is implemented by the court regarding the execution of payment a sum of money to support the ease of doing business and what problems are encountered in the implementation of the execution by the court?

In general, there are 3 types of civil dispute executions known in Indonesia, both those carried out based on court decisions, decisions of quasi-judicial institutions, and other documents equivalent to decisions. The three types of executions are: (1) execution of the payment of a sum of money as stipulated in Article 196 HIR/Article 208 RBg; (2) execution of carrying out an act as regulated in Article 225 HIR/Article 259 RBg; and (3) execution of emptying movable or

to some constraints in the execution process.

7 M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, 6 (4th ed. Sinar Grafika 2009).

8 *Agenda Pembangunan Bidang Rencana Pembangunan Jangka Menengah Nasional (RPJMN) 2015-2019*, Book II, p.556 (Bappenas, 2017).

immovable objects (real execution) as stipulated in Article 1033 Rv. This paper only focuses on the execution of the payment of some money due to its importance for the business sustainability.

II. Definition and Scope of the Study

Retnowulan Sutantio and Iskandar Oeripkartawinata define execution as a forced action by the court against the losing party who does not want to carry out the decision voluntarily.⁹ Meanwhile, M. Yahya Harahap's definition of execution is a legal action taken by the court to the losing party in a case, which is also a rule and procedure for further proceedings in the case investigation. Harahap argues that execution is nothing but a continuous action of the entire civil procedural law process.¹⁰ R. Subekti uses the term execution or enforcement of the decision and defines it as the defeated party unwilling to obey the decision voluntarily so that the decision must be forced on him/her with the help of the general power.¹¹ In line with R Subekti, Sudikno Mertokusumo also uses the term execution or enforcement of the decision and defines it as the realization of the obligations of the parties concerned to fulfill the achievements listed in the decision.¹² These four views explain the definition of execution which is merely limited to the enforcement of court decisions.

A broader definition of execution was put forward by Mochammad Dja'is, who argues that execution is an attempt by a creditor to realize rights by force because the debtor does not want to voluntarily fulfill his obligations. As such, execution is part of the legal dispute resolution process. The definition shows that the execution is also an effort to realize the rights, not just the implementation of court decisions.¹³ Strengthening this view, the court in practice does not only accept requests for enforcement of court decisions but also decisions

9 Retnowulan Sutantio & Iskandar Oeripkartawinata, *Hukum Acara Perdata dalam Teori dan Praktek.*, 1 (Bandung: Mandar Maju 1989).

10 M. Yahya Harahap, *Supra* note 7, at 1.

11 See Mochammad Dja'is, *Pikiran Dasar Hukum Eksekusi*, 12 (Semarang: Fakultas Hukum Universitas Diponegoro 2000).

12 Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, 183 (Yogyakarta: Liberty 1999).

13 Herri Swantoro, *Dilema Eksekusi: Ketika Eksekusi Perdata Ada di Simpang Jalan Pembelajaran dari Pengadilan Negeri*, 25 (Jakarta: Rayyana Komunikasindo 2018).

of quasi-judicial institutions, including: (i) arbitration awards;¹⁴ (ii) the decision of the Consumer Dispute Settlement Body (BPSK);¹⁵ (iii) decisions of the Business Competition Supervisory Commission (KPPU);¹⁶ and (iv) decision of the Information Commission (KI).¹⁷ The court also accepts the requests for execution of documents equaled to decisions of permanent legal force based on statutory regulations, including: (i) original deed (*gross akta*);¹⁸(ii) mortgage rights certificates;¹⁹ and (iii) fiduciary guarantee certificate.²⁰

Accordingly, what is meant by the definition of civil dispute execution is a forced act carried out by a court conducted based on a request against a party who does not want to voluntarily implement a decision that has permanent legal force, both the court's decision and the decision of a quasi-judicial institution, and other

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- 14 An arbitration award is a decision handed down by an arbitration institution or individual arbitrator as an alternative institution for resolving disputes outside the court. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, art. 61 and art. 62 para. 1 (Indon.) stipulates that the implementation of an arbitration award that is not carried out voluntarily is carried out by order of the chief judge of the court after previously registering an application for execution to the court registrar.
- 15 BPSK Decisions are arbitration decisions issued by BPSK as the body in charge of handling and resolving disputes between business actors and consumers. The verdict of the BPSK assembly is requested to determine its enforcement to the district court in the place of the disadvantaged consumer [Law No. 8 of 1999 on Consumer Protection, art. 1 num. 11 and art. 57 (Indon.)].
- 16 KPPU Decisions are decisions issued by KPPU as a commission formed to oversee business actors in carrying out their business activities related to whether there is a violation of Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition. Decision of the Commission is requested to determine its enforcement to the district court [Law No. 5 of 1999, art. 1 num. 18 and art. 46 (Indon.)].
- 17 KI Decisions are decisions issued by the Commission of Information in disputes occurring between public bodies and users of public information relating to the right to obtain and use information based on legislation [Law No. 14 of 2008 on Openness of Public Information, art. 1 num. 5 (Indon.)]. Supreme Court Regulation (Perma) No. 2 of 2011 on Procedures for Settling Public Information Disputes in Courts, art. 12 para. 1 (Indon.) states that decisions of KI with legal force can still be requested for the enforcement to be made to the chief judge of the competent court by the information applicant.
- 18 A Grosse Deed is an authentic deed containing the recognition of debt with the formulation of solely an obligation to pay/pay off a certain amount of money (HIR, art. 224 or RBg art. 258 (Indon.)). Grosse is the first copy of an authentic deed where the first copy is given to creditors [Supreme Court Circular Letter (SEMA) No. 213/229/85/Um-TU/Pdt].
- 19 A mortgage certificate is a document that contains a guarantee right which is charged to the land rights as referred to in Law No. 5 of 1960 on Basic Regulations on Agrarian Principles, hereafter or not, together with other objects that constitute a unity with the land, for the payment of certain debts, which give preference to certain creditors over other creditors [Law No. 4 of 1996 on Mortgage Rights and Objects Related to Land, art. 1 num. 1 (Indon.)]. Law No. 4 of 1996, art. 14 para. 3 (Indon.) states that the certificate of mortgage has the same executorial power as a court decision that has obtained permanent legal force.
- 20 A fiduciary guarantee certificate is a document that contains collateral rights for both tangible and intangible movable objects and immovable property, especially buildings that cannot be encumbered by mortgage rights, as collateral for paying off certain debts, giving a preferred position to fiduciary recipients of other creditors [Law No. 42 of 1999 on Fiduciary Guarantees, art. 1 num. 2 (Indon.)]. Fiduciary guarantee certificates have the same executorial power as court decisions that have obtained permanent legal force [Law No. 42 of 1999, art. 15 para. 2 (Indon.)].

documents that are equal with court decisions.

Execution of civil disputes discussed in this study is related to the execution to pay a sum of money which is constrained and eventually obstructs the running of a business for the parties concerned with the object of the dispute being executed.

III. Problems in Enforcing Civil Court Decisions in General

Based on reality, several legal issues can be identified as problems in the enforcement of civil court decisions as follows:

A. Enforcement of Decision cannot be realized

Several obstacles were encountered in the implementation of the execution by the Registrar or the Bailiff in the field, so the execution could not be carried out as it should. Among the obstacles that are often found in the field are as follows:²¹

1. The Object of the Execution is the Asset of a State-Owned Enterprise

One of the reasons why the execution cannot be carried out is related to the execution of the assets belonging to State-Owned Enterprises (BUMN). The two examples of cases described above clearly show that although the court decision already has a permanent legal force and the decision dictum is condemnatory, as stated that the Decree of the South Jakarta District Court, No. 15/Pdt.G/2012/PN.JKt.Sel, dated August 15, 2012, in the Principal Case of the 4th dictum, is condemnatory which reads as follows:

“Order the Defendant to immediately process the return of the money that has been deposited by the owner of the building, PT. Bintang Sedayu Makmur in the amount of IDR 2,361,713,760 (two billion three hundred sixty-one million seven hundred three thirteen thousand seven hundred sixty Rupiah)”

21 Sri Hartini, Setiati Widiastuti & Iffah Nurhayati, *Eksekusi putusan hakim dalam sengketa perdata di Pengadilan Negeri Sleman*, 14 J. Civ. 2 (2017).

Responding to the request, the Chief Judge of the South Jakarta District Court issued a decision No. 09/Eks.Pdt/2016 jo. No. 15/Pdt.G/2012/PN.Jkt.Sel, dated 17 February 2016, on reprimand/Aanmaning for Respondent Execution.

Respondent Executed has been summoned 2 (two) times to the court to be given a warning but was never present as the Warning Proceeding/First Warning dated March 2, 2016 and Warning Proceeding/Second Warning dated 16 March 2016, each numbered 09/Ex.Ptt/2016 jo. No. 15/Pdt.G/2012/PN.Jkt.Sel.

Since the Executed Respondent has not yet carried out his obligations, the Execution Applicant via his Proxy with a letter dated September 21, submitted an application to the Chief Judge of the South Jakarta District Court to place provisional attachment (enforcement measures by attachment) of the Executed Respondent's assets in the form of:

Land and buildings owned by Respondent Execution located on Jln. Trunojoyo Blok M 1/35, Kebayoran Baru, South Jakarta;

However, because the Respondent is a State-Owned Enterprise, according to the provisions of Article 50 of Law No. 1 of 2004 on the State Treasury, the enforcement measures by attachment cannot be followed up properly. Furthermore, the South Jakarta District Court wrote to the Respondent/State Electricity Company, which is in principle ordered that the decision be carried out by including in the next year's budget proposal for its return to the Execution Petitioner/PT. But to date, the refund of the applicant's execution has not yet been processed. Thus, in this case the execution carried out does not yet have legal certainty for the execution's applicant.

2. Property of the Executed respondent does not Exist

The property that will be executed does not exist. This might have been sold out before the execution was carried out, or have been destroyed because of natural disasters. The absence of the assets to be executed could also occur because the location of the property to be executed was unclear in its boundaries and size. This might also happen because of changes in address. When the suit was filed the property was (for example) located on Jalan Fatmawati No. 10 Rt. 112/04 but it turned out that after the case was decided there was a change of address to Argamulya street No. 21 Rt.14/02 so that at the time the execution was carried out, the location of the goods was no longer in accordance with what was

stated in the verdict.²²

If in reality the items to be executed cannot be shown by the execution petitioner, then the execution itself cannot be carried out. Meanwhile, related to the change of address as mentioned above, the execution will be able to carry out, but the execution applicant must submit a new case, with a new case number and with the petition for an amendment to the verdict.

If the land to be executed has no clear boundary or size, the execution by itself cannot be carried out either. This non-executable statement is temporary until the boundary and size can be clearly known. To overcome this, local checks (court hearing at the disputed land) should be held first, attended by litigants. If the exact size and boundary are successfully found, the execution can be run. If it turns out that nothing has been found, then the execution cannot be executed.²³

3. Orders of the Verdict are Declaratory

As stated above, condemnatory verdicts are decisions that have the nature of punishing or ordering the losing party to do something, not do something, pay, share, dismantle and empty permanent objects. If the verdict is not carried out voluntarily by the losing party, then the winning party may ask the court settling the case to enforce the decision by force.

If the deciding judge is negligent or forgets to include a condemnatory order as mentioned above, then the party wishing to have the decision carried out must file a new lawsuit to the court which decided the first case, by arguing the claim is based on the previous declaratory verdict and asking in the subject matter (*petitum*) that the goods that have been decided in the previous case to be executed. And if necessary, a decision of *Uitvoerbaar bij voorraad* (a decision that can be carried out first despite an appeal and cassation) can be requested.²⁴

22 Winda Pebrianti, *Tinjauan Hukum atas Eksekusi Obyek Jaminan Fidusia Melalui Parate Eksekusi Apabila Obyek Jaminan Beralih Kepada Pihak Ketiga atau Musnah*, 21 *Supremasi Hukum* 1 (2012).

23 Rahmawati Kasim, *Eksekusi yang Tidak Dapat Dijalankan Menurut Hukum Acara Perdata*, 5 *Lex et Societatis* 1, (2017).

24 Mulya Haryadi & Sri Laksmi Anindita, *Langkah Hukum Terhadap Pelaksanaan Putusan Deklarator Yang Tidak Dapat Dieksekusi*, (Fakultas Hukum Universitas Indonesia 2014).

B. Delegation (Request for Assistance) of Court Decision Enforcement.

is the property requested for execution is likely outside the jurisdiction of the Court which decided the case. When this happens, some raise a question on how to carry out the execution? In this case, enforcement of decision can be achieved by using the “delegation of execution” institution as regulated in Article 206 R.Bg and Article 195 HIR. Referring to the regulation, the execution must be carried out through the delegation or request for assistance to other courts, to carry out executions in accordance with the letter of determination submitted to the court.²⁵

The procedure for the implementation of the delegation of execution of objects located outside the jurisdiction of the deciding court is regulated in the civil procedural law. The chief judge of the Court shall make a decision letter which instructs his/her registrar to enforce the decision through the registrar or bailiff of the court where the object of the execution will be carried out. The letter stipulating the execution explains clearly in detail everything that will be executed. If the matters are related to immovable objects, the letter must be clear in stating the size, area and boundaries. If it is about movable goods, the letter must clearly state the brand, the number and things needed. The letter of determination of the execution is sent to the court where the object of execution is situated with a letter of introduction from the chief judge or registrar on behalf of the chief judge.²⁶

C. Third Party Opposition to execution of objects located outside the jurisdiction of the court

If there is a third party opposition/contest (*derden verzet*) to the object of the execution located outside the jurisdiction of the deciding court, to which court should the third party opposition be filed?, is it to the court that decided the case or to the court that carries out the execution?

Article 206 paragraph (6) R.Bg. and Article 195 paragraph (6) of the HIR states that third-party opposition to the enforcement of the judge’s decision (*derden verzet*) is carried out and tried by the Court implementing the judge’s de-

25 Abdul Manan, *Eksekusi dan Lelang dalam Hukum Perdata* (September 18-22, 2011) (Paper presented at the Supreme Court’s National Working Meeting).

26 *Id.*

cision or at the court where the execution is carried out. But according to Article 379 Rv, the third party's opposition must be submitted to the deciding court, not in the place of the court that carries out the execution. These two conflicting opinions in practice are very confusing for law practitioners in executing decisions whose object is outside the jurisdiction of the deciding court.²⁷

Responding to these two conflicting opinions, legal practitioners usually take a middle ground between the two opinions. A claim of a third-party opposition (*derden verzet*) is filed to the court which decides the case, through the court where the execution is carried out. This is more logical since the court that decides the case knows more about the problem, possesses more complete case documents and has a case number.

The examination results of the third party's opposition by the deciding court are then sent to the disputing parties through the court that carries out the execution. The deciding court also estimates the court fees and registers the case in their case registry book.

D. Execution objects are under the third party's control

Execution can not be carried out on goods that are in the hands of third parties, if the third party's control of the goods is legally grounded. Execution can be carried out only if the possession of goods by the third party is illegal or without a legal basis. In this case, if the verdict's order confirms that the object of the case to be executed can be carried out even if the goods are in the hands of anyone, then the execution can be carried out even if the goods are in the hands of third party.

If the goods being executed are being leased by a third party, then the execution must be stopped because the lease agreement continues even if the owner of the item is replaced. Execution of emptying or surrender of the tenant cannot be carried out.

Likewise, in the event that the goods to be executed are being placed as collateral, the execution cannot be carried out as long as the property is being placed as collateral. As long as the goods are pledged as collateral, the executable

²⁷ M Dani Pratama Huzaini, *Pengakuan Hakim atas Perlawanan Pihak Ketiga dalam Eksekusi*, Hukum Online.com, March 14, 2018, available at <https://www.hukumonline.com/berita/baca/lt5aa8aa6d055e5/pengakuan-hakim-atas-perlawanan-pihak-ketiga-dalam-eksekusi/>.

object is bound to the collateral holder. Execution can only be carried out if the executable object is no longer the Defendant's collateral object. The executable objects which are placed as collateral are usually at the Bank, the Cooperative Association or an individual third party.

E. Two conflicting court decisions

Theoretically, it might not make sense if in the same subject matters there are two or more court decisions that are conflicting with each other. However, in practice it is often found two conflicting decisions even though the subject matter is the same.

A court verdict enforced previously may be contrary to the verdict on appeal or cassation level. If the decision has already been enforced, then to fulfill the decision of the appeal or cassation, the previous court decision enforcement will be canceled and must be followed by recovery measures, in the form of compensation or surrender of money or other collateral.²⁸

Apart from the foregoing, what is meant by conflicting decisions is a conflict between two decisions that have permanent legal force; both decisions in the same court level or can occur in different levels. For example, there are two decisions regarding inheritance and division of inheritance with the same object of claim, but each Plaintiff and Defendant are different. Circumstances like this might be impossible, but because, for instance, the heir has died a long time ago and has many offspring and is divorced, things that were previously considered impossible can become a reality.²⁹

Consequently, if two decisions have the same permanent legal force, but the contents are conflicting and the object of the dispute is the same, then it cannot be permanently executed until the conflicting issue is eliminated. One way to eliminate the conflict is through a lawsuit if the parties are not the same or through case review if the parties are the same.

28 Rahmawati Kasim, *spura* note 23.

29 Djazuli Bachar, *Eksekusi Putusan Perkara Perrdata, Segi Hukum dan Penegakan Hukum*, 125 (Akademika Presindo, Jakarta 1994).

F. Objection from the Third Party

Under Article 195 of the HIR, third parties are given the right to file resistance/opposition against executions carried out by the court. This *derden verzet* argument is filed based on “property rights” that those objects that will be executed are the property of the party who submits the resistance. The law says that the execution is prohibited against third party property.

Postponement of execution can only be realized if the resistance proposed by the third party has been examined as carefully and thoroughly as possible. If the results of the examination prove to be true that the item to be executed is the property of the petitioner/third party, then the execution must be postponed until the resistance obtains a decision of permanent legal force. The purpose of this delay is to avoid conflict between the execution with the decision of opposition from a third party.³⁰

Additionally, if the object of execution is still being processed in another case, whether in the first instance, appeal or cassation level, it is better to postpone the execution until the decision obtains permanent legal force. The goal is to avoid conflicting decisions. It is important to remember, based on Article 66 paragraph (2) of Law No. 14 of 1985, case review (PK) does not suspend or stop the execution.³¹

IV Execution of Payment of Amount of Money for the Ease of Doing Business

The aforementioned explanation is related to the execution problems which generally occur in courts. The following is an explanation and study focusing on the execution by payment of a sum of money for the ease of doing business for business actors because the execution of the payment of a sum of money generally comes from a debt dispute between creditors and debtors. In this case, most debtors were sentenced to pay compensation due to default on the debtor’s side, so that the creditor was prevented from obtaining his debt even though there was

30 Tim Riset dan Publikasi, *Menuju Pelaksanaan Eksekusi Putusan Perdata yang Efektif*, available at <https://katadata.co.id/analisisdata/2019/10/01/menuju-pelaksanaan-eksekusi-putusan-perdata-yang-efektif>.

31 *Id.*

a decision to pay a sum of money.

In summary, the stages of enforcing court decision related to payment of a sum of money begin with:

1. enforcement measures by attachment of the property or goods of the respondent, in which there are activities: (a) tracking of the assets of the requested person to be attached; (b) implementation of enforcement measures by attachment; (c) valuation of the assets of the requested attached; and (d) maintenance of requested goods or assets which have been attached; and
2. the sale of the attached goods, both through auctions and direct sales, to pay off the money in order to execute the payment of a sum of money. At each of these stages, an official report is signed by the bailiff, the parties and other relevant authorities.³²

Related to the execution of the payment of a sum of money, the chief judge is authorized to order the registrar to implement enforcement measures by attachment of the object/property of the respondent based on the stipulation, in the form of an execution order, issued by the chief judge. If at the same time there is more than one request for execution that is filed against the respondent, the stipulation of the enforcement measures by attachment contains an order to attach the goods of the requested person until the value meets all the requests for execution. If there are other requests for execution of the respondent before the object/goods belonging to the petitioner are sold, the chief judge has the authority to order the registrar to attach additional/further executions of the object/property belonging to the requested person that has not been attached, and then determine the portion for each requesting execution.³³

Civil procedural law divides two forms of provisional attachment, namely: protective measures by attachment and enforcement measures by attachment. However, there is almost no difference between the two. Both are equally aiming to ensure the fulfillment of the interests of the applicant so that the lawsuit is not empty and are equally forced by the court at the request of the applicant. The

32 M. Tanzil Aziezi, Nur Syarifah, Liza Farihah, Alfeus Jebabun, Nindya Wulandari, Aria Suyudi, Fifiek Noorfritie Woelandara, Yunani Abiyoso & Abdul Rachmat Ariwijaya, *Penguatan Sistem Eksekusi Sengketa Perdata di Indonesia*, 52 (Lembaga Kajian dan Advokasi Independensi Peradilan Indonesian Institute for Independent Judiciary, Jakarta 2019).

33 HIR, art. 204 (Indon.).

differences between the two attachments are as follows:

1. Protective measures by attachment are determined as a guarantee of the applicant's interests carried out during the process of examining the case, whereas enforcement measures by attachment is a guarantee of the interests of payment of a sum of money to the applicant when the decision has final legal force and is carried out in the execution process.
2. Protective measures by attachment are feasible if there is an attempt to embezzle or get rid of movable or immovable property to keep from borrowers,³⁴ whereas enforcement measures by attachment are feasible if the respondent is not willing to carry out the decision as a form of forced execution.
3. Protective measures by attachment are carried out in court hearing, while enforcement measures by attachment are carried out at the location of the item which is to be attached, assisted by two witnesses and a provisional attachment report is made.
4. In the protective measures by attachment, possession of the attached goods remains in the respondent, while in the enforcement measures by attachment, the attached goods are under the control of the court and/or the applicant to pay a sum of money.

Both protective measures by attachment and enforcement measures by attachment are performed with due regard to the following matters:³⁵ (a) the value of attached goods does not exceed the value of the claim; (b) the objects that are prioritized for attachment are movable goods and are only forwarded to an immovable property if the estimated value of movable goods will not be sufficient; (c) immovable objects which become provisionally attached must be recorded in the register that has been provided for it in court and a copy of the official report on attachment must be submitted to the land registration office or the official in charge of making a land sale and purchase deeds so that there is no transfer of goods under attachment.

34 *Id.*, art. 197 para. 5, 6 ~9, and RBg, art. 210 (Indon.).

35 *See* more at the Supreme Court Circular Letter No. 5 of 1975 on Protective Measures by Attachment. Although this regulation contains provisions of protective measures by attachment, most stipulations also apply for enforcement measures by attachment since the Circular Letter regulates principles of provisional attachment outlined in the civil procedural law.

In the case that the object of execution is property owned or controlled by a State-Owned Enterprise (BUMN) or a Regionally-Owned Enterprise (BUMD), basically the object cannot be attached for any purpose.³⁶ However, the Supreme Court instructed the judges in the 2010 Supreme Court National Work Meeting which concluded that the assets of BUMN or BUMD could be attached by the court.³⁷ State finances that are included *inbreng* (capital participation) in BUMN or BUMD can be attached because the assets have been considered to be owned by BUMN or BUMD. However, state money or goods managed by BUMN or BUMD that are not from capital participation, cannot be provisionally attached but by protective and enforcement measures by attachments.

In line with the above explanation, the Execution Guideline at the District Court also confirms that SOEs have gone public or become a public company. Consequently, their money or goods are no longer attached to the elements of state property, so that their possession or attachment is subject to the provisions of civil procedural law by ruling out Article 50 of Law No. 1 of 2004 on the State Treasury. The guideline also states that the chief judge can issue an execution determination which imposes the fulfillment of the orders of the decision to the requesting execution to include the budgeting of government agencies, BUMN/ BUMD in the State Budget (APBN) or Regional Budget (APBD) of the current or next fiscal year budget.

As explained earlier, Article 197 Paragraph (1) of the HIR states that the chief judge has the authority to order the court registrar to attach the goods requested in the context of execution. To perform the order, the registrar must know in advance the goods belonging to the respondent in order to determine exactly which items can be attached since there is an attachment obligation carried out until the amount is sufficient, or may not be less, and cannot exceed the amount of money that must be paid. Therefore, tracing assets is an important stage in the process of decision enforcement, so it is necessary to regulate who are tasked to carry out tracing assets and how to perform the tracing.

The law does not explicitly regulate the asset tracking to ascertain the amount or amount of assets requested for execution that must be executed for the execution of the requesting party. Article 197 HIR only states that the court

36 Law No. 1 of 2004 on The State Treasury, art. 50 (Indon.).

37 Mahkamah Agung, *Rapat Kerja Nasional MA Tahun 2010*, Balikpapan, 11 October 2010. (unpublished Supreme Court working meeting minute).

will put enforcement measures by attachment of the object owned by the respondent. However, there are no rules regarding who should seek information about the goods (assets) belonging to the respondent. This raises the uncertainty as to whether the tracing of the assets is the court's obligation as the party that places enforcement measures by attachment, or the obligation of the applicant as the party that has an interest in the attachment, or the respondent's obligation as the party that should enforce the decision.

In practice, the obligation to trace assets ultimately rests with the applicant. However, the data of these assets are scattered in many places, both owned by the government and private sector, and can only be accessed limitedly by certain parties and/or for the benefit of the pro-yustisia. The bank for instance, will refuse to provide the requested account data to the applicant for reasons of bank confidentiality provisions and therefore will only disclose the data if there is a letter from the court. On the other hand, the court also refuses to issue the letter to the applicant. In the end, the applicant has difficulty in obtaining data on the assets of the respondent, given that there is no legal basis that provides the authority to obtain information on the respondent's assets along with the procedures.³⁸

V. Execution of Payment of Amount of Money in Other Countries

Other countries in the world have different practice of asset tracking. In Italy for instance, asset tracking is possible through negotiations between the parties and the judge enforcing decision regarding the assets that will be attached during the execution process. For this reason, the respondent must provide correct information regarding their assets. To trace assets, the bailiff is authorized to access various electronic databases managed by the Government, including the population database, tax, finance, and the like.³⁹

Meanwhile, Germany sets another example. If on the specified date the respondent has not paid a sum of money, the bailiff will call the respondent to appear at the office of the enforcement officer.⁴⁰ If the applicant and the respondent

38 Aziezi, *supra* note 32, at. 52.

39 *Id.*, at 53 (Italian CPC, Art. 492 bis dan *Germany Law No. 121 of 1 April 1981 on Reform of the Administration of Public Security*, Art.8.).

40 *Id.*, at. 54.

are present, the enforcement officer has the authority to reconcile the parties. If a peace agreement is reached, the decision is carried out voluntarily and can be carried out at any time, a maximum of 12 months.⁴¹ However, if an agreement is not achieved, the respondent is obliged to provide information about the list of his/her assets and provide information about his/her finances,⁴² and the enforcement officer can immediately attach the defendant's goods. If the respondent makes false information or is unwilling to provide information about his/her financial situation and assets, or is not present after being summoned by an enforcement officer, then the court issues an arrest warrant along with the reasons.⁴³

Such detention may only be carried out for a maximum of 6 months, and after the expiration of the 6-month period, the debtor must be released [Article 802j ZPO]. Arrest orders are the judge's authority at the request of the enforcement officer. Usually, a restraining order can be submitted from the beginning of the request for execution. Warrants for detention need not go through a trial beforehand because it is only to get information about the respondent's assets. Detention is carried out by an enforcement officer but may also ask the police for help if the respondent is deemed dangerous. The reinforcement officer is in charge of finding information about the respondent's property, ransacking the house, body, car, etc. Information on the requested assets is also made public so that related parties or the general public can access or obtain a copy. However, to be able to access the asset list must be through an enforcement officer. The list of requested assets is submitted to the Central Execution Court or data execution center by the enforcement officer⁴⁴ and registered electronically.

Execution practices in Italy and Germany show that providing information of the assets of the respondent is basically the responsibility of the respondent, not the applicant. This is understandable given the execution is performed because the respondent does not want to implement the decision voluntarily, so that obligations must be given to facilitate the fulfillment of the applicant's rights, including providing asset information. Unlike the practice in Indonesia, the responsibility for tracing the assets of the requested execution has not been clearly regulated, so the applicant has difficulty obtaining his/her rights if the respondent does not voluntarily submit information about the existence of the assets to be

41 ZPO, art. 802b (Ger.).

42 ZPO art. 802c and 802f (Ger.).

43 ZPO, art. 802g (Ger.).

44 ZPO, art. 802k (Ger.).

executed. Even in practice it is often the respondent who traces the assets of the requested party. Therefore, the petitioner should not be burdened with the obligation to trace assets considering the execution process itself has hampered the fulfillment of his/her rights quickly and easily under the law, while the court does not have the authority to trace the respondent's assets. Unlike in Indonesia, the courts in Italy and Germany have the authority to trace the assets of the respondent with the aim of checking the correctness of the asset information provided by the respondent and/or in the case of the respondent not providing such information.

VI. Improving the Enforcement of Court Decision related to Payment of a Sum of Money

Due to the legal vacuum on the above issue, Indonesia should make clear regulations regarding the authorities who are tracing the assets of the respondent in the process of enforcement of decision. This legal regulation is needed in order to facilitate the applicant's execution so as not hampered to get his/her rights. Practices in Italy and Germany can be a reference for Indonesia to regulate parties who are required to trace and provide information on the assets of the respondent. The obligation should be borne by the respondent. All the asset information must be submitted by the respondent in the *aanmaning* processor until the end of the voluntary deadline for the enforcement of the verdict after *aanmaning*,⁴⁵ which is 8 days. After the deadline, chief judge of the court issues the execution order containing the order to the court registrar to attach the assets of the respondent. However, given that when the said asset information was submitted to the court there was no further examination of the correctness of the asset information provided by the respondent, the chief judge could order the registrar/bailiff to attach all the assets the respondent informed about.

Determination Letter of the execution order also contains an order to the registrar and/or the bailiff to trace the requested assets to the service provider or the asset management agency or the asset information management agency to see if there are still requested assets that are not informed to the court. If this happens,

45 *Aanmaning* is an effort made by chief judge of the deciding court in the form of reprimands to the losing party in order for him/her to enforce the decision voluntarily in a determined time after the chief judge received a petition for execution from the winning party. *See* HIR, art. 196 or Rbg, art. 207 (Indon.).

the chief judge can determine the attachment of the assets of the respondent that is not directly informed of the court when the registrar and/or the bailiff can find the property. This provision can also be used in 2 other conditions, namely: (1) in the case of the respondent not submitting his/her asset information within 8 days; or (2) in the event that an agreement is reached, but the agreement is not carried out until the agreed deadline or 8 days after the agreement (in case there is no agreement on the deadline for implementation).

The Respondent is also prohibited from transferring his/her assets from the date of the summons to the issuance of the execution order. If the respondent is proven to have transferred his/her assets within this time period, then the respondent is subject to an administrative fine, the amount of which will be added in cash to be paid, which is taken from the proceeds of the sale of the requested asset. The provisions of this administrative fine also apply if the respondent is proven not to inform all of his/her assets or attach incorrect asset information. Payment of administrative fines is only done after the payment of money to the applicant is complete.

Considering that asset ownership information should not be easily opened without the asset owner's permission and/or based on the law, the court should cooperate and coordinate with other institutions such as the Asset Management Institution or the Banking Institution to get information regarding the Respondent's assets. The service provider or asset management agency or asset information management agency is required to provide all requested asset information to the registrar and/or the bailiff. If they disobey the order, although the registrar and/or the bailiff have shown the documents mentioned above, then these institutions will be subject to a certain amount of administrative penalty.

The obligation to provide asset information, especially in the form of securities or accounts/deposits in banks has also been regulated in statutory regulations. However, changes to these regulations are needed so that the implementation of asset information tracing in the context of execution can be carried out effectively. At present, providing information relating to securities can only be made by custodian, which in this case is the Kustodian Sentral Efek Indonesia (KSEI/Indonesian Central Securities Depository), based on the request of the parties in the case.⁴⁶ The regulation needs to be amended, namely by adding custodial authority (KSEI) to provide information on ownership of a person's securities

46 Law No. 8 of 1995 on Capital Market, art. 47 para.1(c) (Indon.).

to the court based on order of execution. Whereas, for accounts/deposits, the provision of account/deposit information is currently only allowed in civil cases between banks and customers. The changes to the regulation required are that the provision of account/deposit information must also be made in cases between customers and other parties other than banks. With this change, the tracking of asset information in the form of securities and accounts/deposits in the context of execution can run effectively.

The spread of assets in various places makes assets tracking a time-consuming. The potential for asset transfer is also higher if the tracing is done manually by asking the service provider or asset management agency or asset information management agency one by one. For this reason, it is necessary to open access to data exchange between the court and the service provider or asset management agency or asset information management agency so that the tracking of asset information can run efficiently. The granting of this access can be done with a particular log-in system, such as the provision of a special username and password for the court, so that the provider or asset manager will be alert that a bailiff is tracking the asset information in the course of execution to its data center accompanied by a verification system in the form of a gift access only to certain bailiffs assigned to carry out executions in the case. Conversely, the court also needs to provide data on assets that are being attached, so that the development of asset ownership status can also be known by service provider institutions and asset managers.

Related to the above issue, as a form of commitment and support of the Supreme Court in the context of the ease of doing business, the Supreme Court should enact a legal regulation in the form of a Supreme Court Regulation to regulate procedures and obligations for tracking down respondent's assets in the execution of civil decisions related to payment of a sum of money. In addition, the Supreme Court should also issue a rule that governs the obligation of the Court to appoint bailiffs who have data search competencies to be given access and authority to search information on requested goods at data centers of service provider institutions or asset managers or asset information managers. If there is an abuse of such access and/or authority, the bailiffs will be subject to certain sanctions, including revocation of access to information tracking, to dismissal from office. Thus, information retrieval can be done more efficiently, efficiently, and does not rule out potential misuse of such access and/or authority.

VII. Conclusion

The Supreme Court's support for the ease of doing business has basically been carried out by its subordinate courts with a number of fundamental changes and legal arrangements especially related to procedural law. However, this support has not yet reached the issue of enforcement of the court's decision especially in relation to the execution of paying a sum of money due to the absence of regulation regarding the responsible party for tracing and providing information on the respondent's assets. Ideally, the execution process should facilitate the applicant in obtaining his/her rights because the execution is filed due to the respondent's unwillingness to obey the order of the decision. As a form of support for parties, especially business actors related to legal proceedings in courts, the Supreme Court needs to strictly regulate the authority and guidelines for tracking the assets of the respondent to facilitate the enforcement of decisions by ordering to pay a sum of money. In addition, cooperation with other parties, especially with the Asset Information Provider, Banking and Financial Services Authority (OJK) is also needed.

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