

Urgence for Establishing Rules of Authority Of The Chairman State Court to Change Determination of The Execution of the Execution Created Officer First

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Abstract. One of the things that hindered the confiscation of executions was the change in the chairman of the District Court because they had to wait for a new official. The purpose of this study was to examine the urgency of establishing the rules of authority of the Head of the District Court to change the decision on confiscation of executions made by previous officials and to examine the factors that hindered the implementation of confiscation of executions. The approach used in this study is an empirical normative approach. This research data collection technique was carried out through conventional and online literature searches. The data analysis technique used in this research is qualitative because the data is presented in a descriptive-narrative way. The results of the study indicate that the granting of authority to change the determination of the confiscation of execution of the Head of the District Court aims to resolve a case and determine the position and legal rights of a case. The granting of this authority is usually carried out due to a mutation of the Head of the District Court. Execution assignments that can be changed back are executions that are condemnator. The amendment to a confiscation of execution must be based on a request from the applicant for execution, because this change in application can also relieve the new Head of the District Court in carrying out his duties.

Keywords: Execution, Authority, Urgency

1. Introduction

The existence of a dispute that arises will cause an attempt by one party to obtain their rights from the other party. When his rights are violated and if it cannot be resolved amicably, he will file a lawsuit in court. [1] This is regulated in formal civil law or what is known as civil procedural law. If their case cannot be resolved non-litigation, then the problem or dispute is forced to proceed to the district court so that a clear decision can be obtained on the dispute that occurs. This compulsion is a picture of law and human rights in Indonesia that need to be addressed and the best solution found, because the law must essentially be certain and fair [2]. It must be a code of conduct and fairness because the code of conduct must support an order that is considered reasonable.

A case is submitted to the court for settlement and resolution. The examination of the case ends with a decision, but with the decision alone the problem is not finished. The decision must be implemented, therefore the judge's decision has executorial power, namely the power to enforce what is stipulated in the decision by force. As for what gives the judge the power to execute the execution, it is the head of the decision which reads "For the sake of Justice Based on the One Godhead" [3].

Implementation of the decision begins with a warning by the Head of the District Court to the losing party within a maximum of 8 (eight) days to implement the decision voluntarily. The losing party can voluntarily implement the decision, thereby completing the case without requiring assistance from the court in implementing the decision. If there is a decision which in the first instance is decided and examined by one of the district courts, the execution of that decision is under the orders and leadership of the Head of the District Court concerned (Article 195 Paragraph (1) or Article 206 Paragraph (1) RBg). In this case, the law gives absolute rights to the court of first instance, namely the district court.

One of the things that hindered the confiscation of executions was the change in the chairman of the District Court because they had to wait for a new official. The mutation and replacement of the Head of the District Court in strengthening the career of the Chairman of the District Court opens the possibility that the execution process will be carried out during the leadership period of two different court chiefs, in which case a letter or an order for execution has been issued by the former chairman of the court, but the execution is carried out during the leadership period of the chairman of the court. the new one. In other words, the head of the old court that stipulates the execution decision is replaced by the new chairman of the court before the execution is carried out.

This raises two practices in the field and raises questions about the determination of execution. The new Head of the District Court only carries out the executions that have been determined or can review or change the execution order issued by the old Chief Justice of the District Court [4]t. There are no rules regarding this matter in Indonesian civil procedural law. The formulation of the problem in this study based on the description of the background are : What is the urgency of establishing a regulation on the authority of the Head of the District Court to amend the confiscation of executions made by the previous official?, and What are the inhibiting factors for the execution of confiscation?

2. Method

This type of research is library research [5]. Library research is research that is carried out through library data collection or research carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials. [6]This research includes library research because data sources can be obtained from libraries or other documents in written form, both from journals, books and other literature.

3. Discussion

3.1. The Urgency of Establishing Rules on the Authority of the Head of the District Court to Change the Decision on Execution Seizures Made by Previous Officials

Disputes in material civil law can be in the form of default and acts against the law or actions that control and cause harm to other people related to defending the rights in question

[7]. Sometimes the parties resolve the matter in a familial (peaceful) way, but it is not uncommon for the parties concerned to settle the case to the district court. The implementation of decisions in cases at the first instance being examined by a district court is by order and or by the leadership of the head of the district court who at the first level examines the case according to the method regulated in the articles.

The court, with all the existing considerations, tries to make a decision that is fair or at least close to the sense of justice itself. Dispute resolution in court is basically carried out by applying the principles of simplicity, speed and low cost, in accordance with Article 2 Paragraph (4) and Article 4 Paragraph (2) of the Law of the Republic of Indonesia Number 48 Year 2009 concerning Judicial Power. Courts as a place to seek justice and judges as case breaker are required to fulfill legal objectives. The main legal objective that must be fulfilled by judges is justice (*gerechtigheit*) [8].

A court decision is meaningless if it is not implemented, therefore the judge's decision has executorial legal force, namely the power to enforce what is stipulated in the decision by force with the help of state instruments. The executive power of the judge's decision is the head of the decision which reads "For Justice Based on God Almighty". New rights can be obtained after execution or execution of court decisions. In other words, executions are carried out in order to have meaning for justice. If the execution is difficult to carry out then the enforcement of justice will be disrupted.

Judge decisions that can be executed are judges' decisions with permanent legal force (*inkracht van gewisde*) which are condemnatoir (punishment) and cannot be implemented against judges' decisions which are declaratoir and constitutief. The judge's decision is punitive, for example punishing the losing party to carry out the contents of the judge's decision, for example so that the losing party pays a debt or destroys a building.

Decisions that already have legal force still have 3 (three) kinds of power, so that the decision can be implemented, namely binding force, evidence strength, and power to be implemented. It should also be stated that not all decisions that already have definite force must be carried out, because what needs to be carried out is only condemnatoir decisions, namely punishments containing an order to a party to do an act.

The convicted party (the defendant or the opponent) is required to obey and fulfill its obligations listed in the decision which has permanent legal force voluntarily. A voluntary decision is when the losing party voluntarily fulfills itself perfectly in carrying out the contents of the decision. However, it is possible that the decision will not be implemented by one of the parties because in the future there is one party who is dissatisfied with the decision, then what will happen is denial or denial of the decision. A denial is a form of an act that does not want to do what it should do or which is an obligation.

To deal with execution problems, court officials have their own characteristics, among others, in the form of an agreement on time to consider and make decisions, many issues are left to the discretion of the Head of the District Court or High Court because the non-execution participants are incomplete [9]. Execution either in the Law of the Republic of Indonesia Number 14 of 1970, Law of the Republic of Indonesia Number 4 of 2004 and even the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, basically implements court decisions that aim to make a decision effective into a decision. forced performance. How to carry out a judge's decision or execution is regulated in Article 196 to Article 208 of the HIR.

Execution confiscation is a confiscation that is determined and carried out after a case has a decision that has permanent legal force. The meaning of confiscation of execution which

can be summarized from Article 197 to Article 200 Paragraph (1) HIR is the confiscation of the respondent's or debtor's assets after the warning period has been exceeded.

Execution confiscation is intended as a guarantor of the amount of money that must be paid to the applicant (creditor or bank). [10]The way to pay off the payment of this amount of money is by selling the property auction defendant who has been confiscated. The confiscation of the debtor's assets or the defendant's execution is as a payment fund for the amount of money that was sentenced to him.

[11]One of the things that hindered the confiscation of executions was when there was a change in the Head of the District Court because they had to wait for a new official. The mutation and replacement of the Head of the District Court in strengthening the career of the Chairman of the District Court opens the possibility that the process of confiscation of executions will be carried out during the leadership period of two different Heads of the District Court, in which case it is possible that a letter or stipulation of an order for confiscation of execution has been issued by the former Chairman of the District Court, but the execution is carried out within the leadership period of the new Chief Justice of the District Court. In other words, the previous Head of the District Court who determined the decision to confiscate the execution was replaced by the new Head of the District Court before the execution was carried out.

According to Article 195 Paragraph (1) of the HIR or Article 206 Paragraph (1) of the RBG, it is explained that the authority to carry out an execution confiscation is only given to the District Court. In general, the authority of the head of the court and the judge is different. The chairman of the court may serve as a judge, but the judge may not necessarily serve as the chairman of the court because to become the chairman of the court, he must be a judge and deputy chairman of the court for at least 10 years. The judge does not have the authority possessed by the head of the court, as well as the authority to determine the confiscation of execution.

The urgency of granting the authority of the Head of the District Court to amend the confiscation of execution is motivated by the following reasons:

1. The granting of the authority to amend the confiscation of execution by the Head of the District Court is aimed at resolving a case and determining the legal status and rights of the case, which can complete the execution by force.
2. The existence of a mutation of the Chairman of the District Court may result in a change in the determination of the confiscation of execution.
3. Facilitate efforts to resolve changes to the confiscation of executions given by the previous Head of the District Court to the new Head of the District Court.

The granting of the authority of the Head of the District Court to change the confiscation of the execution of the previous Chief Justice is usually carried out due to a mutation of the Chairman of the District Court so as to allow the execution to be carried out under the leadership of two different Chief Justices. This is with the intention of a confiscation of executions that has been issued by the previous Chairperson of the Court, but the execution is carried out by the new Chairperson of the Court. This provides an opportunity for the new Head of the District Court to amend the confiscation of execution which has permanent legal force. The determination of the execution that can be changed back is the execution that is condemnator, that is, it is punishing. The urgency of the establishment of a regulation on the authority of the Head of the District Court to change the determination of the confiscation of execution is given if:

1. There is a decision by the Head of the District Court who previously stated that the decision could not be implemented.
2. There was a strong protest from the community during the execution.
3. There is a decision by the Head of the District Court which has not previously been implemented due to a different object.
4. There was an error or mistake from the previous Head of the District Court because the community referred to the confiscation of executions carried out by the new Head of the District Court.

The amendment to a confiscation of execution must be based on a request from the applicant for execution, because this change in application can also relieve the new Head of the District Court in carrying out his duties. There has not been found a rule regarding the authority of the Head of the District Court to change the confiscation of executions made by the previous Chief Justice. For the sake of legal certainty, a provision is needed to allow the granting of authority to the new Head of the District Court to amend the confiscation of executions issued by the previous Head of the District Court in a clear and detailed manner and by reflecting justice.

3.2. Factors Inhibiting the Implementation of Execution Seizures

A civil law dispute is submitted by the party concerned to the court for resolution or settlement. The case examination is indeed ended with a decision, but with the imposition of the decision alone, the problem is not necessarily resolved, but the decision must be implemented or executed which in this case is referred to as execution of the decision.

Execution is an important thing in the litigation process and is the culmination of civil cases carried out against judges' decisions that have permanent legal force (inkracht van gewisde). The judge's decision is said to have permanent legal force, if the decision is accepted by both parties in the lawsuit and no legal action is taken.

Legal provisions governing how to implement decisions judges are regulated in Articles 195-224 HIR or Articles 206-258 RBG. The implementation of the judge's decision can be done voluntarily and by force. The voluntary implementation of the judge's decision is carried out directly by the defeated party without coercion from any party, while the forced implementation of the judge's decision is carried out based on the request of the winning party to the Head of the District Court who decides the case because the losing party is not willing to carry out the judge's decision voluntarily.

Implementing the judge's decision by force, if the judge deems it necessary can ask for assistance from law enforcement officers (police and military) to maintain security and overcome all things that can hinder the smooth implementation of the execution. The implementation of the judge's decision requires intervention from the District Court that decides the case. The definition of execution is almost the same that execution is the execution of a decision by force. The winning party in the case as an interested party submits a request for execution to the Head of the District Court who decides the case.

The implementation of the judge's decision is carried out voluntarily without court intervention but is carried out directly by the losing party voluntarily without any element of coercion from any party in accordance with the judge's decision. The implementation of the judge's decision is carried out voluntarily on the awareness and willingness of the losing party to surrender the rights of the winning party in accordance with the verdict. The judge's decision which is carried out voluntarily will not find any obstacles in the implementation of the decision because the decision is carried out on the consciousness and will of the losing

party without any coercion from any party. The losing party realizes that the object in dispute is no longer his right and has also admitted it before the judge, in good faith the losing party carries out its obligations in accordance with the judge's decision.

However, in practice, not always a judge's decision that has legal force is still carried out by the losing party voluntarily carrying out their obligations according to the judge's decision. The losing party has bad intentions, deliberately stalls for time and is not even willing to carry out its obligations according to the judge's decision.

One of the principles in civil procedural law states that whoever has an interest must be active. In a judge's decision that has permanent legal force, if the losing party is not willing to carry out the judge's decision voluntarily, then the party won in the case must be active so that the judge's decision is carried out by the defeated party in the case according to the judge's decision. Efforts that can be taken by the winning party is to apply for the implementation of the judge's decision by force through the District Court which is authorized to carry out the execution, namely the District Court which decides the case.

Even in realizing a court decision that has permanent legal force, it will never run smoothly according to the theory of execution, but there will be obstacles that are intended to prevent the execution of the decision or confiscation of execution. Some of the obstacles in carrying out execution confiscations are:

1. Juridical Technical Barriers

The purpose of this juridical technical obstacle is an obstacle that occurs from within or because of certain legal means that provide an opportunity for the executed party to delay the execution, various kinds of juridical technical obstacles such as:

- a. Third party match (derden verzet)

Derden verzet is a form of legal effort carried out by a third party against a judge's decision which has permanent legal force. This can be caused by the clerk or bailiff wrongly executing or the object of execution has been transferred to the hands of a third party. Basically a third party can file a fight against the execution of a decision, based on the provisions of Article 193 Paragraph (6) HIR or Article 200 Paragraph (6) RBG. So the only condition for being accepted by a third party to file a challenge is that the object to be executed belongs to him, therefore if the reason for filing a lawsuit is outside the property rights. A third party's resistance basically does not delay the execution (Article 207 HIR or Article 227 RBG), unless the Head of the District Court gives an order for the execution to be postponed until a court decision is filed against the resistance.

- b. Executed party fight

Similar to the resistance of the third party, the resistance of the executed party also basically does not postpone the execution unless the Head of the District Court orders that the execution be postponed.

- c. Request for reconsideration

The judicial review is an extraordinary legal effort, so basically it does not delay the execution so that if the Head of the District Court or the Supreme Court intends to suspend execution because there is a review must really examine whether it really has

met the extraordinary reasons. If it is clear that the reasons for the judicial review are well-founded and supported by complete evidence, so that it is estimated that the application for judicial review will be granted by the Supreme Court, then with the permission of the Head of the High Court, the execution of the decision is intended to be postponed.

d. The verdict is not clear

If the decision is not clear, then the Head of the District Court must examine the legal considerations of the decision or ask the panel of judges who made the decision. The discrepancy between the decision and its implementation may be due to the lack of clarity, for example the area, boundaries, and the location of the land to be executed, which are listed in the decision, are not in accordance with field conditions.

e. The object of execution is state property

This is because the goods belonging to the government are state assets so that the execution process must go through the state auction agency so that it cannot be judged by the judge alone.

f. Convoluted execution procedural

The procedural matters referred to are technical, cost, administrative, security execution, and others.

2. Non-Juridical Barriers

The purpose of these non-technical barriers are obstacles that come from outside the scope of the legislation which are intended to prevent execution. Various kinds of non-technical barriers, among others, such as:

a. Mass mobilization

Mass mobilization is an act carried out by the losing or executed party by mobilizing the masses or their supporters with the aim of delaying or canceling the execution. This condition becomes even more complicated if the execution applicant also mobilizes a mass of supporters, this can not only delay the execution but can also trigger conflicts between their respective supporters.

b. Intervention of the other party

The meaning of the other party here is not a third party who is submitting a resistance, but outside the litigation party who appears to be an obstacle to the execution of the execution by interfering with the execution process.

c. The destruction of the object of execution or natural disaster

Obstacles in the form of destruction of the object of execution or due to natural disasters are unexpected and unavoidable, therefore this is one of the risks in the execution if the execution process takes too long.

Efforts to overcome obstacles in the implementation of confiscation of executions include preventive measures and countermeasures in every procedural procedure as well as the

firmness of the apparatus, clear rules for the community that hinder the execution, the good faith of the parties and there must be a legal approach to the parties involved. Efforts to overcome the need for good coordination between the parties and the courts and officials related to the implementation of the execution so that there are no errors that can hinder the execution.

In order to prevent the possibility of events occurring that may cause obstacles in the execution of executions, especially those carried out by the losing party, the implementation of executions by the District Court may request assistance from law enforcement officers such as the Police or the TNI who can assist in securing and smoothing the execution of executions. The security forces will take action if an incident is found in the field that can disrupt the smooth execution of the execution. If during the execution in the field there are no things that can interfere and hinder the execution, the security forces will not act. All costs incurred in carrying out the execution shall be borne by the applicant for execution. If during the execution it is found that there are parties who oppose or threaten the clerk or bailiff in carrying out their duties to carry out the execution, then the party who opposes or threatens it can be threatened with criminal law (Article 211 in conjunction with Article 214 of the Criminal Code).

Another effort is to increase the number of personnel or increase the number of security personnel in order to carry out executions safely without the need for interference from outside parties. The execution applicant is able to prepare the tools or the place for the executed goods to be placed temporarily, in practice the execution applicant has provided a transport vehicle and a place so that the executed goods can be stored safely.

The confiscation of execution system needs to be reformed, in addition to realizing people's rights, of course, to enforce the law and create legal certainty. In addition to several problems that are inhibiting factors for confiscation of executions as mentioned above, another problem is related to outdated regulations. The HIR, which is the law of execution procedure, has been in effect since the Dutch era, so it is no longer in accordance with the times and society.

4. Conclusion

Granting the authority to amend the confiscation of execution by the Head of the District Court is aimed at resolving a case and determining the position and legal rights of the said case. The granting of this authority is usually carried out due to a mutation of the Head of the District Court. The determination of the execution that can be changed back is the execution that is condemnator, that is, it is punishing. The amendment to a confiscation of execution must be based on a request from the applicant for execution, because this change in application can also relieve the new Head of the District Court in carrying out his duties. However, until now there has not been found a rule regarding the authority of the Head of the District Court to change the confiscation of executions made by the previous Chair of the Court.

The impediments to confiscation of executions do not only come from outside or from the respondent's refusal efforts, but technically sometimes parties can take advantage of legal remedies that are common to prevent or try to thwart the confiscation of executions. Efforts to avoid these obstacles are that each execution confiscation is always accompanied by the

assistance of law enforcement such as the Police and the Army who can assist in security and smooth execution of executions.

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