

CRIMINALIZING NON-COMPLIANCE WITH CIVIL EXECUTION ORDERS: A STRATEGY FOR ENHANCING LEGAL CERTAINTY AND BUSINESS EFFICIENCY

Nuryanto Ahmad Daim

Universitas Wijaya Putra Surabaya

nuryantoadaim@ump.ac.id

Rihantoro Bayuaji

Universitas Wijaya Putra Surabaya

rihantorobayuaji@ump.ac.id

Suwarno Abadi

Universitas Wijaya Putra Surabaya

suwarnoabadi@ump.ac.id

Abstract

People seeking justice through civil justice often complain about legal uncertainty in terms of execution, because the execution procedure for civil cases does not have definite time period, especially when the Defendant takes other legal remedies such as opposition lawsuits and civil lawsuits, the execution process is also postponed. Moreover, when the losing party uses resistance methods in the execution time, the execution is also postponed. Therefore, this research aims to obtain the value of legal certainty regarding the implementation of the execution, because the losing party or related third parties can pursue a lawsuit against the execution which can prevent the execution. The target of this research is to create a policy model for resolving legal issues related to execution in order to create a sense of legal certainty and justice for the plaintiff (the winning party). The method used is normative juridical with a conceptual approach, statutory approach, comparative approach and philosophical approach. The findings of the research are that: non-compliance with legally binding decisions is still a form of civil

contempt because it belongs to the civil domain, it is constructive (indirect) contempt because the execution of a civil case is the last part of the hearing process, so the action is identified as disobeying a court order occurring when an act that should or should not be carried out by someone ordered or requested by the court in carrying out his or her functions cannot be fulfilled by the person who was ordered. So this unlawful act can be qualified as a criminal act as regulated in Article 281 paragraph (1) of Law Number 1 of 2023 on the Criminal Code (KUHP).

Keywords: Civil Execution, Legal Certainty, Contempt of Court, Criminal Sanction

Introduction

Legal certainty is a goal of the law enforcement process, in addition to justice and expediency. The presence of legal certainty is in line with the demands of society in the industrial era who want all stages and production processes to be carried out with certainty, without any further push and pull regarding procedures, time and costs. So with legal certainty in the practice of law enforcement, all processes are carried out in a measurable manner and the results can be predicted (predictable).¹ The practice of civil justice in Indonesia, which is still held based on the *Het Herzijene Indonesische Reglement* (HIR) and *Buitengewesten Reglement* (RBg), does not have a mechanism that is considered easy for simple, fast and low-cost dispute resolution. This condition has an impact on the minimal number of civil suitcases submitted to and resolved by the Court. In 2023, there will be 123,164 civil cases consisting of lawsuits, petitions, simple lawsuits and oppositions filed in courts throughout Indonesia, only 46,619 lawsuits and a total of 7,066 simple lawsuits will be filed. Meanwhile, the most cases handled by the District Court were petition cases, namely 68,330.²

¹ Brian Mund and Leonard Bailey, "Privilege in Data Breach Investigations," *Journal Of Federal Law And Practice* (May 2021): 51.

² Mahkamah Agung RI, Laporan Tahunan Mahkamah Agung Republik Indonesia Tahun 2023 (2023) <<http://www.mahkamahagung.go.id/images/LTMARI-2011.pdf>>.

Compared to the number of Micro, Small and Medium Enterprises (UMKM) of 57.9 that have the potential disputes, the ratio of the number of cases of 0.067% is very small. In fact, the provisions of Article 4 of Law Number 6 of 2023 on Job Creation state that in order to achieve the goal of creating and increasing employment opportunities by providing convenience, protection and empowerment for Cooperatives and UMKM as well as national industry and trade as an effort to be able to absorb energy Indonesia's work as widely as possible while still paying attention to balance and progress between regions within the national economic unity (as intended in Article 3 of the Job Creation Law). The scope of this law regulates Job Creation strategic policies which include improving the investment ecosystem and business activities; employment; convenience; protection and empowerment of cooperatives and UMKM; ease of doing business, etc.³

The concept of ease of doing business which is mentioned in the Job Creation Law as the basis for the development policy above, is an application of the Ease of Doing Business Index (EODB) concept which is a research method (survey) created by the World Bank Group. In this survey, higher ratings (low numerical values) indicate well usually more simply, bureaucratic policies and procedures for businesses and more strongly protection of property rights. The research funded by the World Bank to evaluate the policies adopted by the government of the country was used as the object of the survey in order to make business easier for business actors to start and/or carry out their business activities. This government policy shows that it can have an impact on economic growth from increasing regulations issued by the government of the country that is the object of research.⁴

The ease of doing business ranking carried out by the World Bank's International Finance Corporation (IFC) has succeeded in encouraging a number of countries to become friendly investment, with the ease of doing business provided through government policies. This research is

³ Tulus Tambunan, "Recent Evidence of the Development of Micro, Small and Medium Enterprises in Indonesia," *Journal of Global Entrepreneurship Research* 9, no. 1 (December 23, 2019): 18.

⁴ Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, "The Economic Consequences of Legal Origins," *Journal of Economic Literature* 46, no. 2 (May 1, 2008): 285–332.

needed to determine the optimal level of business regulation that a country applies to welcome both foreign and domestic investors—for example, taking time court procedures needed to resolve cases and optimalization level of social protection for the community. The indicators compiled in the ease of doing business projects become valid research objects, making it possible to carry out this research.⁵

To increase investment competitiveness aiming to realize people's welfare. So, it is necessary to carry out innovations for issuing regulations related to investment, until regulations are found that are in line with the principles of good governance, which of course are also conducive to national economic growth in facing global competition.⁶ The Indonesian government has been very aware of this, so the Job Creation Law was drafted based on a firm determination as stated in the following Academic Text of the Draft Job Creation Law: Based on Indonesia's Vision 2045, Indonesia wishes to become the 5 (five) major powers. The world economy by becoming a high-income country by 2040. Therefore, in the National Medium Term Development Plan (RPJMN) document of the National Development Planning Agency (Bappenas) for 2020-2024, the Government has targeted economic growth to grow by an average of 6 (six) percent in 5 (five) years and Gross Domestic Product (GDP) per capita growth of 4 (four) +/-1 (one) percent. In the long term, the economic transformation carried out in 2020-2024 will bring Indonesia out of the Middle-Income Trap (MIT) in 2036. With an average economic growth of 5.7 (five point seven) percent and real GDP growth per capita by 5 (five) percent, in 2045 Indonesia is predicted to become a developed country with a sustainable economy, poverty rate approaching 0 (zero) percent, and having a quality workforce.⁷

⁵ Thomas Mwimba and Sulemana Mumuni, "Balancing the Imbalances in Africa's Root to Economic Development: Does the Business Environment Matter," October 24, 2022.

⁶ Guido Bertucci, *Economic Governance: Guidelines For Effective Financial Management* (New York: Department of Economic and Social Affairs Division for Public Economics and Public Administration, 2000).

⁷ Lisno Setiawan, *Laporan Apbn, and Utama, "Strategi Lolos Jebakan Negara Berpenghasilan Menengah"* (August 16, 2023).

One of the 10 (ten) indicators in Ease Doing Business is simple, fast and low cost judicial procedure in resolving civil disputes. In generally, problems in the judicial sector in Indonesia contain complex problems, ranging from procedures that are not simple, resolution times and costs that cannot be estimated. Especially at the execution stage of civil court decisions having permanent legal force.⁸

The implementation of a court decision in a civil case having permanent legal force (*inkracht van gewijsde*) has the value of legal certainty if it is implemented by the losing party, in this case the defendant, voluntarily. And if the losing party refuses to implement it voluntarily, then the court decision will be implemented. by force conducted by court supported by the relevant law enforcement officials (this is what is called the concept of execution). It is very unfortunate that regarding the execution of court decisions in civil cases, there is no national legal basis, but principally it still refers to colonial legal provisions. Even if there are national legal provisions, their level is only limited to the Regulations of the Supreme Court of the Republic of Indonesia.⁹

Execution as a legal action carried out by the court against the losing party in a case, is a follow-up procedure and procedure to the case examination process. Therefore, execution is nothing other than a continuous action in the entire civil procedural legal process. Execution is an inseparable unit from the implementation of the procedural rules as referred to in the civil procedural law.¹⁰

There are 2 (two) types of execution of civil case decisions by the court, namely real execution and execution of payment of a sum of money. Real execution includes clearing land and demolishing buildings, while execution of payment of a sum of money includes auction execution. In general, both forms of execution have obstacles in practice, for example, if it is related to the real execution, there is mass

⁸ Yunani Abiyoso, "Improving the Ease of Doing Business in Indonesia: Problems Related to Contract Enforcement in The Court," *IOP Conference Series: Earth and Environmental Science* 175 (July 24, 2018): 012032.

⁹ Joe Frank Simon and Franky Samosir, "Execution Of Court Decisions Against Land Cases," *International Asia Of Law and Money Laundering (LAML)* 1, no. 1 (March 25, 2022): 39–46.

¹⁰ Muhammad Ilyas et al., "Supervision of Fair Execution for Civil Case Decision," *Journal of Law, Policy and Globalization* 70 (2018): 102.

resistance, in connection with the auction execution, the Execution Petitioner has difficulty tracing the material assets belonging to the losing party in order to carry out the execution, there is a lawsuit against third parties (*derden verzet*). These obstacles are things that can destroy legal certainty and justice for the party petitioning execution (the winning party). Therefore, this research aims to create a policy model for resolving legal issues related to execution so that it aims to create a sense of legal certainty and justice for the Plaintiff (the winning party).¹¹

Having a feeling of innocence even though a court decision has stated that one of the losing parties has been legally and convincingly proven is a bad precedent for the portrait of law enforcement in a country. Especially if the defiance is accompanied by efforts to oppose a court decision that has permanent legal force. This shows a low level of legal awareness regarding the application of law in society. This phenomenon has recently occurred a lot in the legal life of Indonesian society.¹²

This negative legal awareness results in disobedience to the law or in a more direct sentence, disobedience to the law. This is in contrast to the legal ideal (*das sein*) that legal compliance is essentially the legal awareness and loyalty of citizens to the laws applying as rules of the game which have become a mutual agreement in interactions between individuals in society to realize common goals.¹³

This type of research is normative juridical research, namely by using sources of primary legal materials and secondary legal materials. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in making legislation, and judges' decisions. Secondary materials consist of all legal publications that are not official

¹¹ Ismail Rumadan, "Enforcement of Court Decision Regarding Payment of a Sum of Money in Civil Disputes to Support the Ease of Doing Business in Indonesia," *Korea Legislation Research Institute Journal of Law and Legislation* 10 (2020): 389–414.

¹² Nur Amalia Katili, Dian Ekawaty Ismail, and Suwitno Yutye Imran, "The Disparity in Judge's Decisions in Forced Defense Cases," *Estudiante Law Journal* 4, no. 2 (June 14, 2022): 384–398.

¹³ Daim, Nuryanto Ahmad, et. al., 'Mengendus Kekuatan Hukum, Meraba Fungsi Hukum Dalam Perkembangan Masyarakat "Postmodern"', in *Potret Hukum Kontemporer Di Indonesia*, ed. by Fikri Hadi (Yogyakarta: KYTA, 2023), p. 123.

documents. Legal publications include textbooks, legal dictionaries, and commentaries on court decisions.¹⁴

Some of the writings align with the topics raised in this article, so you can be sure that if this article is genuine, the differences between the articles will be explained. Similar articles are:

The article entitled "Legal Protection for Auction Winners When the Request for Execution of the Auction Object is Sued by the Debtor" written by Yunantyo Adi Setyawan in the *Jursitic Journal*, Volume 03, No. April 01, 2022.

The article entitled "Problems in Implementing Auctions for the Execution of Court Decisions in Civil Cases in Practice", written by Depri Liber Sonata in the *Legal Science Journal Fiat Justitia* Volume 6 No. May 2-August 2012.

The article entitled "The Urgency of Contempt of Court in the Implementation of PTUN Decisions: A Comparative Study of Indonesia and Thailand", written by Ahsana Nadiyya, in the *Justitia Journal*, Faculty of Law, Wiralodra University.

Compared to these articles, there is novelty in the discussion about the application of criminal sanctions in civil executions that are obstructed by the Defendant because this article only discusses the obstacles and barriers to implementing civil executions in practice. There is only one that discusses the urgency of implementing the "Urgency of Contempt of Court", but only for Administrative Court decisions which have permanent legal force. Meanwhile, this paper systematically interprets the application of criminal sanctions regulated in Article 281 paragraph (1) of the Criminal Code for parties committing acts of obstructing civil executions.

The Concept of Execution

In the context of law enforcement, the implementation of court decisions is divided into several aspects, namely execution from criminal, civil and administrative aspects. However, in this research, the aspect of execution that is studied by researchers is execution in the civil aspect. Execution in the civil aspect can conceptually be found from

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, 6th ed. (Jakarta: Kencana Prenada Media Group, 2010).

one of the principles of civil execution, namely the principle of executing decisions that have permanent legal force.¹⁵

What is meant by civil execution is an action carried out by force against the party who loses the case. The act of execution only becomes a problem if the losing party is the Defendant. Looking at the concept of civil execution, a juridical conclusion can be drawn that civil execution is an execution carried out against the Defendant as the losing party in a civil case, and is carried out after there is a court decision which has permanent legal force (i.e. there is no legal remedy from the Defendant or there has been a cassation decision from the Supreme Court of the Republic of Indonesia), and there must be coercive efforts from the Court as the party implementing the decision which has permanent legal force.¹⁶

In the perspective of the provisions of Article 178 HIR, Article 189 RBG, the end of the process of examining a case in court is with the handing down of a decision. In this connection, the panel of judges, because of their position, after deliberation, makes a decision. For what has been decided by the court, the winning party of course hopes that it can be implemented (executed) because if it is not implemented, the court decision will be meaningless.

This means that if the court decision is not implemented it will actually cause legal uncertainty regarding the legal status of the object of the case if the losing party does not want to implement the court decision as stated in the decision. If a court decision which has permanent legal force (*inkracht van gewijsde*) is implemented voluntarily by the defeated party, of course this will not cause problems. It often happens that parties who are dissatisfied with the court decision are not willing to implement the court decision voluntarily, even though the decision has permanent legal force, so the problem then becomes how to implement the court decision.¹⁷

¹⁵ Irma Garwan, "Ideal Execution of Civil, Cases Based on Principles of Justice to Create a Simple and Low-Cost Judiciary," *Journal of Humanities and Social Sciences Studies* 2, no. 6 (November 30, 2020): 70–77.

¹⁶ Danar Fiscusia Kurniaji, "Pendaftaran Hak Atas Tanah Berdasarkan Putusan Pengadilan," *Fiat Justitia: Jurnal Ilmu Hukum* 10, no. 3 (April 3, 2017).

¹⁷ Heru Sugiyono and Robinsar Marbun, "Disparity Of Judges' Decisions In Civil Dispute," *International Journal of Business, Economics and Law* 20, no. 5 (2019): 127–134.

As a result of this reluctance, the method taken by the court was to carry it out by force, which was then termed execution. This explanation emphasizes that the term execution is a synonym for the implementation of the court decision itself, noting that the losing party is not willing to voluntarily carry out the contents of the court decision.¹⁸

Legal Problem At The Real Execution Stage

The first stage in the civil execution is *aanmaning* (warning). *Aanmaning* is the first stage after the winning party in a civil case, namely the Plaintiff, has submitted a letter requesting real execution to the Chairman of the Court who examines and decides civil cases at the first instance. Conceptually, warning (*aanmaning*) is one of the basic requirements for execution, without prior warning, execution may not be carried out, and execution is effective from the time the warning deadline has been exceeded. The legal basis for warnings (*aanmaning*) is regulated in Article 196 HIR or Article 207 RBG.¹⁹

In carrying out warning (*aanmaning*), it is possible that the losing party in the civil case, namely the Respondent of execution, does not immediately attend the summons for the warning hearing, so the Chief Judge of District Court will usually summon the respondent for execution once again. In this regard, in principle the absence of the respondent of execution at the warning hearing is not absolute, because if the respondent for execution does not notify the Chief Judge of District Court about implementation of a court decision having permanent legal force voluntarily, then legally the Chief Judge of District Court can carry out an execution attempt at the next stage after the warning hearing.²⁰

In law enforcement practice, there is also a Chief Judge of District Court continuing to summon the Respondent for Execution when the Respondent for Execution is not present at the first reminder hearing. Therefore, this kind of thing requires standard regulations regarding the urgency of the Respondent for execution's presence at the

¹⁸ Kyle Morgan, "A Government of Laws Not of Precedents," *British Journal of American Legal Studies* 3 (2014): 187.

¹⁹ M. Khoidin, *Problematika Eksekusi Sertifikat Hak Tanggungan* (Yogyakarta: LaksBang Presindo, 2005).

²⁰ Ahyar Ari Gayo, "Problematic in The Civil Decision Execution Process in Indonesia in Order to Realize Court Excellence," *Jurnal Penelitian Hukum De Jure* 22, no. 4 (December 16, 2022): 551.

reminder hearing, so that postponing the warning hearing does not hinder the subsequent execution process.²¹

Petition for execution is the basis for the Chief Judge of District Court to issue a reminder. *Aanmaning* is an action and effort carried out by the Chief judge of District Court deciding the case in the form of a "reprimand" to the Defendant (who lost) so that he or she carries out the contents of the decision voluntarily within the specified time after the Chief Judge of District Court receives the petition for execution from the Plaintiff. The Chief judge of District Court gives the losing party a period of time for him to carry out the contents of the decision, a maximum of 8 (eight) days from the time the debtor is summoned to appear to be given a reminder. The reprimand does not need to be carried out in open court, because it is no longer an examination of the dispute, and the issue concerns the implementation of the decision regarding the dispute. Every reprimand is carried out by making an official report, with the aim of fulfilling the juridical requirements (as evidence that the reprimand has been carried out).

The second stage in The Civil Execution is the confiscation execution stage. The legal basis for confiscation of execution is Article 197, Article 198, Article 199 or Article 208, Article 209, and Article 210 HIR. In legal principle, execution confiscation has the same character as collateral confiscation, namely placing confiscation on the material object to be executed (both real and executed). Execution Confiscation is carried out when after a warning hearing, the Execution Respondent still does not voluntarily carry out the contents of a court decision which has permanent legal force. The conditions that are required for confiscation execution to be carried out are:

The Respondent for execution does not attend the reminder hearing without a proper reason;

The Respondent for execution does not carry out the contents of the court decision having permanent legal force voluntarily.²² In the implementation of confiscation of execution, especially in the case of actual execution, it is stated in the confiscation of execution decree signed by the chief Judge of District Court . One of the execution

²¹ Rita Herlina et al., *Integrasi Sistem Kelembagaan Pelaksanaan Putusan Perkara Perdata Yang Telah Berkekuatan Hukum Tetap* (Jakarta: Kencana, 2022).

²² . Sujayadi and . Yuniarti, "Pelaksanaan Sita Jaminan Dalam Hukum Acara Arbitrase," *Yuridika* 25, no. 1 (February 8, 2010).

confiscation procedures must be carried out at the location of the object where the execution confiscation is placed. Therefore, the Registrar or Bailiff comes to the place where the goods to be confiscated are located to see the type, size and location of the goods to be confiscated.²³

However, in practice, the implementation of confiscation executions, especially real executions, is not easy, by the time the execution confiscation decision is read in object of execution, the respondent for execution takes steps to resist the Registrar or Bailiff who is tasked with carrying out the reading of the execution confiscation decision, therefore, if the execution confiscation decision is not read can be carried out with security considerations, it is necessary to have a regulation so that the decision to confiscate execution can be carried out without reading the object to be confiscated and in the presence of the Execution Respondent, because if this is postponed it will be detrimental to the interests of the Execution Petitioner.²⁴

The third stage in the civil execution is *constatering* (observation) stage. *Constatering* is the stage after the execution confiscation is carried out, *constatering* is a newly regulated stage, where before the real execution is carried out in the form of land emptying or building dismantling, *constatering* must be carried out. *Constatering* has a legal concept, namely the process of matching the boundaries of the disputed land listed in the case file with the conditions on the ground and recording changes to the boundaries of the disputed land in the latest situation, as well as recording the subjects who control the object of the dispute, that is land. This constating stage is usually carried out by the Dutch government in execution procedures, especially in cases of inheritance and land objects.²⁵

The legal basis for counterstatement is the Decree of the Director General of the General Court Number: 40/DJU/SK/HM.02.3/1/2019 on Guidelines for Execution in District Courts. Looking at the constating stage, there are several things having

²³ Laila M. Rasyid and Herlinawati, *Modul Pengantar Hukum Acara Perdata*, 1st ed. (Lhokseumawe: UNIMAL PRESS, 2015).

²⁴ Depri Liber Sonata, "Permasalahan Pelaksanaan Lelang Eksekusi Putusan Pengadilan Dalam Perkara Perdata Dalam Praktik," *FLAT JUSTISIA: Jurnal Ilmu Hukum* 6, no. 2 (October 21, 2015).

²⁵ Wouter Burgerhart, Wilbert Kolkman, and Leon Verstappen, *Handboek Boedelafwikkeling* (Zutphen Netherlands: Walburg Press, 2021).

implications for the petitioner for execution's sense of legal certainty, including:

- 1) The process leading to real execution is longer;
- 2) The potential for real execution failure will arise;
- 3) Potential non-executable.

The formulation of dispute handling at the execution stage of civil cases in the *constatering*, qualification and constituent processes, where the results of this process will make the judge converge on several possible answers, namely:

To postpone or not to postpone depends on whether or not there is a dependency between the 2 (two) cases;

Postponing or not postponing because even though the judge feels that another decision is not needed, the parties are filing the case in another court.

There is no need to postpone it because the decisions are not related so there will be no contradictory decisions. The second point is a recommendation which is expected to be able to encourage systematic law enforcement by judges so as to realize justice, certainty and expediency, which shows that determining the postponement of a case cannot be left entirely to the judge but also pays attention to the actions of the parties.²⁶

So that in carrying out the execution there are no doubts as above, the judge should, in deciding the case, carry out systematic pre-judicial dispute handling in order to support the validity of the evidence and avoid contradictory decisions, so that law enforcement can be achieved through a judge's decision that reflects justice, legal certainty and expediency.

The fourth stage in the civil execution is land emptying or building demolition. Execution of land emptying or building demolition is the final stage in the real execution, which is mainly emptying the building. One of the problems in real execution is in the case of the transfer or placement of the respondent for execution's belongings, when the respondent for execution does not carry it out voluntarily, the

²⁶ Peter Jeremiah Setiawan, Xavier Nugraha, and Luisa Srihandayani, "Konsep Penegakan Hukum Yang Sistematis Dalam Perselisihan Pra-Yudisial Di Indonesia," *Jurnal Hukum Ins Quia Iustum* 29, no. 1 (January 1, 2022): 68–92.

petitioner for execution is responsible for the respondent for execution's items.²⁷

The problem of removing the goods belonging to the executed party does not only arise in building emptying executions that are not attended by the executed party. This problem often arises, even if he attends the execution, where the Respondent for Execution is reluctant to remove his belongings from the place that is about to be vacated. Therefore, when a problem arises regarding the release and placement of goods to be emptied, whether the Execution Respondent is present or not at the execution of the land emptying or building demolition, then the legal basis that can be submitted is Article 197 paragraph (9) HIR or Article 212 RBG, which are the goods -The goods of the Execution Respondent can be secured by the Execution Applicant under the following conditions:

- 1) At the designated place for execution;
- 2) In a proper storage place;
- 3) Storage location approved by the local government;
- 4) Inform the police or village head to guard against acts of theft or looting of goods.

However, there are problems in practice or in the field, namely regarding financing, where financing for storage and security is whose responsibility and for how long, the Execution Applicant rents a place to store the Execution Respondent's belongings. Therefore, new execution arrangements are needed to accommodate problems in the field like this.²⁸

Legal Problem in Auction Execution

The problem often arising in practice related to obstacles to the sale of execution auction objects is that the auction object has not been sold, there are no takers for it caused by several things. In the event that there are no bids in the auction as mentioned above, the auction official issues a decision letter to conduct a re-auction based on the petition for Re-Auction submitted by the petitioner for auction to the Auction

²⁷ Munir Wadi, "Perbantuan Satuan Polisi Pamong Praja Dalam Eksekusi Tanah Negara Yang dikuasai Warga," *Reformasi Hukum* XXI, no. 2 (n.d.): 263.

²⁸ M. Taniel Aziezi et al., *Kertas Kebijakan "Penguatan Sistem Eksekusi Sengketa Perdata Di Indonesia"* (Jakarta: Lembaga Kajian dan Advokasi Independensi Peradilan Indonesian Institute for Independent Judiciary, 2019).

Office. However, in the event that even though the re-auction has been carried out several times and the object of execution has not been sold, in practice the solution that can be implemented is:

- 1) Gradually reduce the limit value so that the highest buyer's price is achieved, and the re-auction as intended can be carried out even if only 1 (one) auction participant participates.
- 2) Carrying out the vacating execution first by the petitioner for execution, bearing in mind that usually those interested in the auction cannot see and examine the auction object because it is still controlled by the owner. Thus, the solution that can be taken is to execute the emptying first before the auction sale is carried out. Meanwhile, the execution costs for the vacating are temporarily paid by the petitioner for execution, which will later be replaced by the amount of money spent by the respondent for execution when the auction object has been legally sold.

After discussing civil execution issues in relation to the sale of auction objects. In this sub-chapter we will discuss the function, role and coordination between the District Court, the State Treasury and Auction Office (KPKNL), and the Indonesian National Police (POLRI) in overcoming obstacles to executions in practice, especially in the event of:

- 1) The executed party does not want to vacate the object of execution. In carrying out their duties, bailiffs often face several obstacles because practice and theory are sometimes different. The emergence of obstacles in practice makes it difficult for bailiffs when carrying out their duties in the field.
- 2) If the executed party still refuses to vacate the object of execution, then coercive measures will continue to be implemented, with the following stages:

Even though article 200 (11) HIR states that the police can be asked for assistance if necessary, in practice it is rare to find Bailiffs carrying out confiscations without assistance from the police for security reasons and often the executed party continues to fight to defend the object of the dispute.

The role of the police in the process of carrying out the vacating confiscation was proven by the participation of representatives from the

police in signing the Minutes of Emptying after the confiscation was completed. Then, in accordance with the duties of the bailiff, namely providing an official copy of the execution report to interested parties, those are:

- 1) Notification given to the executed party 7 (seven) days before the start of the execution;
- 2) After receiving the order for execution by the Chief Judge of District Court, the Bailiff will coordinate with the police by submitting a Letter of Request for Security Assistance addressed to the Head of the Indonesian National Police Resort where the object of execution is located cq. Head of the Police Operational Section, who will then proceed to the local Head of the Indonesian State Police Sector (Kapolsek) where the seizure of execution will be carried out.

The Shifting Meaning of Court Decisions Those Can Be Executed

Based on Article 66 paragraph (2) Law Number 14 of 1985 concerning the Supreme Court of the Republic of Indonesia. it is stated that the request for reconsideration (PK) does not suspend or stop the implementation of the court decision (execution). However, in current practice, when there is a PK legal effort, the execution of a court decision that has legal force is still postponed on the basis of caution. The concern that occurs is that the PK's decision cancels decisions at previous levels, so that this becomes the basis for the Chief of Court who receives the execution request from the petitioner for execution to postpone the execution.

Of course, the phenomenon of law enforcement practices like this results in the legal certainty of the Petitioner for execution being sacrificed, because the petitioner for execution has to wait quite a long time for the execution to be carried out by the Chief Judge of District Court. Even though it is clear in Article 66 paragraph (2) of Law Number 14 of 1985 on the Supreme Court of the Republic of Indonesia. that the legal action for Review (PK) does not delay the execution. Thus, the concept of the "permanent legal force" of a Court Decision has shifted.

The above phenomenon proves that there has been an inconsistency with the Supreme Court Law in the field of law enforcement practice, so that people seeking justice, in this case the

petitioner for executions, do not receive legal certainty. This kind of practice is certainly contradictory to the Supreme Court regulation and harms the sense of justice.²⁹

There are many problems related to the execution of civil decisions basically triggered by the existence of outdated laws. To this day, the legal basis used in civil executions is colonial legacy legislation, namely HIR and RBG, this certainly does not accommodate the dynamics developing in society. Therefore, without exaggeration, it is time for the Government to immediately propose a National Civil Procedure Law which contains norms governing civil executions.

The problem experienced by the auction winner after purchasing the mortgage auction item was that the object he purchased was inhabited and the occupants did not want to vacate it voluntarily. In the problem under study, the occupants were not the auctioned debtors but former employees of the auctioned debtors or other people who had been ordered to prevent the transfer of assets. As a result of the auction object being occupied, the auction winner must request a vacancy execution from the Court so that he can take control of the auction item he purchased.

However, the debtor being auctioned is still hampering the efforts made by the auction winner, namely by filing a lawsuit against the execution of the vacancy, which is a separate lawsuit from the lawsuit for Unlawful Actions against the auction process. In this research, the facts were obtained that:

- 1) Reasons regarding the existence of a rental relationship between the occupant of the auction object and the debtor/auctioneer, or reasons regarding the existence of an appeal process submitted by the auctioned debtor (Plaintiff) who is challenging the auction process against the Creditor and the auction winner, these matters cannot suspend the execution of the vacancy against inhabited auction objects;
- 2) The party who is the respondent for execution does not have to be in the name of the debtor/auctioneer, but in this research the fact was obtained that the respondent for execution is the occupant;

²⁹ M. Lutfi Chakim, "Mewujudkan Keadilan Melalui Upaya Hukum Peninjauan Kembali Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 12, no. 2 (May 20, 2016): 328.

- 3) In the event that the ownership of the Mortgage Rights auction object has been transferred to the name of the auction winner, then for the purposes of executing the vacancy, the Court does not need to confiscate the execution.³⁰

If there is a lawsuit against the Chief Judge of District Court's decision regarding the order to execute the vacancy, the lawsuit against it cannot be a reason to suspend the implementation of the execution of the vacancy. If there is a lawsuit against the Chief Judge of District Court's decision regarding the vacating execution order, the lawsuit against it cannot be a reason to suspend the implementation of the vacating execution. This policy is to guarantee legal certainty demanded by society in the modern era not only requiring justice. Principally the judicial process must be simple, not complicated, with measurable costs and time and there is certainty regarding the recovery of losses suffered by the Plaintiff.³¹

Justice has indeed become the main goal of law enforcement since legal norms were implemented in state and government administration. However, as time goes by and the needs of industrial society demand definite and measurable processes, legal certainty becomes a necessity. Especially in the business sector, ease of doing business must be a priority in government administration.³²

Applicating Criminal Sanctions in Civil Execution

Since the discussion of the law on Supreme Court in 1985, law enforcers have sensed that there was a situation that was not conducive to judicial practice in Indonesia. Therefore, the idea emerged demanding the need for special provisions regarding criminal acts in the judicial process. The judges responded to this situation by submitting ideas or proposals regarding the need to create a special law or

³⁰ Yunantyo Adi Setyawan, "Perlindungan Hukum Bagi Pemenang Lelang Manakala Permohonan Eksekusi Pengosongan Objek Lelang Digugat Debitur," *Jurnal Juristic* 3, no. 01 (May 1, 2022): 110.

³¹ Rian Saputra et al., "Simple Claim Execution Reorientation in Civil and Business Disputes for Legal Certainty," *KnE Social Sciences* (January 5, 2024).

³² Kimberly Martin, Keith E. Lee Jr., and John Powell Hall, *Public Policy: Origins, Practice, and Analysis* (Dahlonega, Georgia: University of North Georgia Press, 2021).

regulation that could provide protection for judges and other court officials in carrying out their duties.³³

Theoretically, the description of the scope of Contempt of Court which is an act of disobedience to a legally binding decision is still a form of civil contempt because it is civil law enforcement, so it is only constructive (indirect) contempt because it is carried out outside the trial process, and the act is qualified as disobeying a court order which occurs when an action that should be done or not done by someone who is ordered or asked by the court in carrying out their functions cannot be fulfilled by someone who is ordered.³⁴

In law enforcement practice, the public often misunderstands and is misled by the term "contempt of court" which means contempt of the law or contempt of court or even contempt of justice. The term "contempt of court" gives the impression that what will be protected is the majesty of the court, but this is not the case. In fact, in contempt of court, justice itself is being abused and insulted, not just the court as a body and not just judges as law enforcement officials.³⁵

In 1994, the Irish Law Reform Commission, in its report on Contempt of Court, made a number of recommendations for legal reform, including that several statutory offenses should be introduced to replace existing contempt of court legislation. The court has since reiterated that contempt of law and the courts need to be reformed. For example, they note that the line between criminal and civil contempt is difficult to draw and is blurry. Therefore, in the case of *Irish Bank Resolution Corp Ltd v Quinn and Ors*, the Supreme Court of Ireland drew attention to the "amorphous" nature of the applicable law. In such cases, a definitive and punitive sentence has been imposed for past refusal to comply with court orders, coupled with an indefinite prison sentence to compel the person to comply with future court orders. The Irish Supreme Court held that, in the circumstances, a definite sentence

³³ Sufiarina Sufiarina and Efa Fakhriah, "One Roof Judicial System In Indonesia," *Indonesia Law Review* 2, no. 3 (December 31, 2012).

³⁴ H. Yusep Mulyana, "Actions That Obstacle The Justice Process (Contempt Of Court) in The Criminal Law System in Indonesia," *East Asian Journal of Multidisciplinary Research* 2, no. 2 (February 28, 2023): 811–822.

³⁵ Bob Franklin et al., *Key Concepts in Journalism Studies* (1 Oliver's Yard, 55 City Road, London EC1Y 1SP United Kingdom : SAGE Publications Ltd, 2005).

could be justified but should not be combined with an indefinite coercive commitment.³⁶

Despite the unclear distinction between contempt of court in criminal and civil cases, the law in force in Ireland makes it difficult for a person imprisoned for civil contempt to be deprived of his or her liberty without the procedures that apply in a criminal trial. Further difficulties arise because the law of contempt of court is almost entirely common law, so there are no statutory regulations that regulate exactly what is meant by this law. As a result, these laws are open to challenges that are unclear and difficult to understand.³⁷

In contrast to Ireland and Indonesia, in the structure of the Ministry of Justice, Thailand has a Legal Execution Department to handle the results of court decisions against litigants. Apart from that, if the losing party is not willing to voluntarily carry out the court's decision, they can be sentenced to criminal contempt of court.³⁸

The use of criminal law policies through the criminalization of losing parties in civil cases who do not comply with the implementation of court decisions can provide access to justice for citizens whose lawsuits have been granted. The imposition of contempt of court on parties who do not comply with court decisions is also in accordance with the principle of *ultimum remedium*, namely that criminal law is used as a last resort when other legal remedies (administrative and civil) can no longer be used to provide certainty of legal protection. This is important to guarantee the human rights of citizens whose lawsuit for justice has been granted by the judge for the wrongdoing of the losing party which is an important part of enforcing the constitutional rights of citizens to obtain justice in the realization of the implementation of court decisions to recover civil losses suffered by them.³⁹

The background to the proposal regarding the need to regulate criminal acts against the judiciary in Indonesia can be seen from the

³⁶ Justice John Quirke, *Contempt Of Court And Other Offences And Torts Involving The Administration Of Justice* (Dublin, Ireland, 2016).

³⁷ Team, "Guide on Article 6 of the European Convention on Human Rights," *European Court of Human Rights* (2017).

³⁸ Rully Novian et al., *Strategi Menangani Overcrowding Di Indonesia : Penyebab, Dampak Dan Penyelesaiannya*, 1st ed. (Jakarta Selatan: Institute for Criminal Justice Reform (ICJR), 2018).

³⁹ M. Musmuliadin, Erlyn Indarti, and Nur Rochaeti, *International Conference Restructuring and Transforming Law*, 1st ed., vol. 1, 2022.

promulgation of Law Number 14 of 1985 concerning the Supreme Court, especially the General Explanation point 4 which states that: In order to further guarantee the creation of the best possible atmosphere for the administration of justice in order to uphold law and justice based on Pancasila, it is necessary to create a law that regulates action against actions, behavior, attitudes and/or speech that can demean and undermine the authority, dignity and honor of the judiciary known as contempt of court.⁴⁰

Finally, in Law Number 1 of 2023 on the Criminal Code (KUHP), the provisions regarding Contempt of Court are regulated in Chapter VI under the title Criminal Acts Against the Judicial Process. According to the provisions of Article 280 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code (KUHP) regulates that:

Any person who, at the time of the court trial, shall be punished with a fine of up to category II:

- a. Disobeying court orders are issued for the purposes of the judicial process.
- b. Behaving disrespectfully towards law enforcement officers, court officials, or the court even though they have been warned by the Judge;
- c. Attacking the integrity of law enforcement officers, court officials, or court proceedings;

Meanwhile, according to the provisions of Article 281 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code (KUHP) regulates that:

Any person who obstructs, intimidates or influences an official carrying out the duties of an investigation, prosecution, examination at a court hearing or court decision with the intention of forcing or persuading him to carry out or not carry out his duties shall be punished by a maximum imprisonment of 7 (seven) years. 6 (six) months or a maximum fine of category VI.

Indeed, the above norms do not specifically regulate the criminal act of contempt of court which is committed at the stage of executing a court decision. It only regulates contempt of court in

⁴⁰ Siti Rahmawati Djula, "The Formation Of The Contempt Of Court Law To Maintain The Dignity Of Peradi And Indonesia," *Estudiante Law Journal* 1, no. 1 (February 19, 2019): 223–241.

"...examinations at court hearings, or court decisions". The word court decision here can be interpreted narrowly as merely regarding the judge's process in making a decision which must not be influenced by anything or anyone, because the judge must be free and independent in deciding cases, so that the judge's integrity and honor are maintained.

However, on the other hand, the honor and dignity of the court can be violated if the court decision is not obeyed by the losing party in a civil trial. In this case, the Chief of Court at the execution stage of the civil decision has issued a decree of execution, in this case anyone is obliged to comply with the contents of this decree of execution. If the contents of the execution decree remain unimplemented, the dignity of the court will definitely be damaged by the act of disobeying the court decision which has permanent legal force.

In the regulations in the Criminal Code, the provisions regarding Contempt of Court only regulate criminal acts in the trial process, whereas within the scope of Contempt of Court it is clear that the act of not complying with a decision that has permanent legal force is also an act of Contempt of Court. The act of disobeying a decision that has legal force remains clearly an insult to justice itself, moreover there is no threat of punishment for those who do not comply with a court decision which will result in further deterioration of justice in Indonesia, so it is necessary to create separate regulations regarding Contempt of Court which include criminal acts in the trial process and outside the trial process. This is a breakthrough to raise the dignity of the court, because many court decisions are not obeyed by the losing party.

The criminal act of Contempt of Court can be committed by people who are involved in a case process or not, inside or outside the court, carried out actively or passively with the aim of humiliating the authority and dignity of the court or obstructing court officials in carrying out justice. So the criminal act of Contempt of Court is aimed at or in conflict with the administration of justice, *rechtspleging* (the course of justice). The term Contempt of Court is said to be a general term because it can be distinguished between civil contempt and criminal contempt, direct contempt and indirect contempt. The act of disobeying a legally binding decision is still a form of Civil Contempt because it is in the civil domain, constitutes Constructive (indirect) contempt because it is carried out outside the court process, and the act is qualified as disobeying a court order which occurs if an act that should

have been done or not done by someone who is ordered or asked by the court to carry out their functions cannot be fulfilled by someone who is ordered.⁴¹

In the provisions of the Criminal Code, the act of disobeying a decision that has permanent legal force is clearly qualified as an insult to justice itself, moreover there is no threat of punishment for those who do not comply with the court's decision which will result in further deterioration of justice in Indonesia.⁴²

The application of criminal sanctions in the civil case execution mechanism is expected to be able to meet current legal needs, because society in general works in the business sector in particular. There is a dire need for simple, concise administration of justice, with measurable costs and time. This need is encapsulated in legal certainty which is an important element in the concept of ease of doing business.⁴³

Conclusion

Disobedience to decisions that have legal force is still a form of civil contempt because it falls within the field of civil law. And it is constructive (indirect) contempt because the execution of a civil case is the last part of the trial process, so this action is qualified as disobeying a court order. This criminal offense qualification can be applied if an act that should have been carried out or not carried out by a person who has been decided to lose in a civil case, which is ordered or requested by the court in carrying out its functions cannot be fulfilled by the party ordered. So that this unlawful act can be qualified as a criminal act of contempt of court as regulated in Article 281 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code (KUHP). However, if this legal norm is interpreted rigidly, it can only be applied to violations that occur in the trial process and the formulation of court decisions, while the application of criminal sanctions in the implementation of civil executions is a systematic interpretation of this criminal law norm.

⁴¹ Mulyana, *Op. Cit.* p. 813.

⁴² Sri Wahyuningsih, "Analisis Perbuatan Ketidakpatuhan Terhadap Pelaksanaan Putusan Perdata Yang Telah Berkekuatan Hukum Tetap Sebagai Contempt Of Court" (2020).

⁴³ OECD/Open Society Foundations, *Legal Needs Surveys and Access to Justice* (Paris: OECD, 2019).

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