



Volume 41 No 2, May 2026

DOI: <https://doi.org/10.20473/ydk.v37i3.88374>Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan
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Yuridika (ISSN: 0215-840X | e-ISSN: 2528-3103)

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FAKULTAS HUKUM UNIVERSITAS AIRLANGGA

Article history: Submitted 20 June 2022; Accepted 17 August 2025; Available Online 29 May 2026.

Law Enforcement Through Judicial Institutions Within The Indonesian Constitutional System

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Abstract

Fundamentally, the execution of a Court Decision that has attained permanent legal force (*inkracht van gewijsde*) constitutes the final stage in the sequence of litigation proceedings within judicial institutions. However, decisions eligible for immediate execution (*uitvoerbaar bij voorraad*), as stipulated under Article 180 paragraph (1) of the *Herzien Inlandsch Reglement (HIR)*, may be enforced prematurely. This applies even if the decision has not yet become final and binding due to the losing party pursuing legal remedies such as *verzet* (opposition), appeal, or cassation. In practice, however, losing parties often demonstrate a lack of voluntary compliance in fulfilling the obligations dictated by a Court Decision. Consequently, intervention from an external authority is necessitated; in this context, the court is legally empowered to "compel" the losing party to execute the judgment. This research examines the extent of the judiciary's role in presiding over executions to safeguard the interests of the litigants. It is observed that judges, in their capacity as executors, tend to prioritize formalistic procedures, which often leads to procedural inefficiency. This creates a risk of protracted execution timelines, further exacerbated by a rigid adherence to redundant formalities. The research methodology employed to address these issues includes the statute approach, the conceptual approach (utilizing legal theories from scholars), and the case approach (analyzing prior court rulings).

Keywords: Execution; Judicial Institutions; Law Enforcement.

Introductions

Pancasila as the philosophical foundation and state ideology of Indonesia mandates that judicial institutions play a role in upholding law and justice. Courts examine, adjudicate, and decide cases in accordance with their authority to ensure justice for justice seekers. Through this distribution of authority, law enforcement can function properly. Law enforcement is essential for the development of a civilized and dignified nation. The progress of a country is determined by the functioning

of its legal system in distributing and safeguarding societal values based on the principles of truth and justice.¹

Law enforcement, in addition to creating justice, is also carried out to ensure legal certainty in Indonesia. Sudikno Mertokusumo defines legal certainty as a legal objective that provides protection against arbitrary actions by authorities and fosters the expectation of a more orderly legal society. Therefore, legal certainty must be established to create legal order.²

Soerjono Soekanto views law enforcement as a process that essentially involves the exercise of discretion, namely decision-making that is not entirely regulated by legal rules and involves personal judgment. Conceptually, the core of law enforcement lies in the effort to harmonize the values contained in legal norms with their actual implementation, in order to create, maintain, and preserve order in social life. This philosophical conception requires further elaboration to become more concrete.³

Satjipto Raharjo concludes that law enforcement is a process of realizing legal intentions into reality. These legal intentions refer to the ideas of the legislative body as formulated in legal regulations. The formulation of lawmakers' ideas as set out in these legal rules will determine how law enforcement is carried out.⁴ Furthermore, Satjipto Raharjo explains that law enforcement aims to protect society from harmful acts, to reform offenders so that they become law-abiding, to prevent arbitrary actions by both offenders and law enforcers, and to resolve conflicts in order to restore balance and order within society.⁵

Law enforcement and the application of law must realize justice. If legislation is no longer in accordance with societal developments, does not reflect a sense

¹ Lawrence M Friedman, *The Legal System: A Social Science Perspective* (Rusel Sage Foundation 1975) 75.

² Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum*, Citra Aditya, Bandung (Citra Aditya Bhakti 2009) 20.

³ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Raja Grafindo Persada 1983) 7.

⁴ Satjipto Raharjo, *Penegakan Hukum Sebagai Tinjauan Sosiologis* (Genta Publishing 2009) 25.

⁵ *ibid* 12.

of justice, or has not regulated a particular matter, then law enforcers are obliged to explore and understand the legal values that live within society. Thus, law enforcement in the courts does not only create certainty and order, but also justice.

From the perspective of its subjects, law enforcement can be understood in both a broad and a narrow sense. In the broad sense, law enforcement involves every legal subject who complies with legal norms. In the narrow sense, law enforcement is the duty of law enforcement officials to ensure that the law operates properly, including the use of coercive measures when necessary.⁶

Law enforcement can also be viewed from its object, namely the law itself, in both a broad and a narrow sense. In the broad sense, law enforcement includes the application of written rules as well as the values of justice that live within society. In the narrow sense, law enforcement is limited only to the implementation of written regulations. Therefore, the term law enforcement may refer either to law enforcement in the broad sense or merely to the enforcement of regulations in the narrow sense.⁷ The distinction between written legal rules and the values of justice is reflected in the terms the rule of law and the rule by law. The rule of law refers to governance based on law that upholds justice (the rule of just law) and affirms that the state is governed by law, not by individuals (the rule of law and not of man). In contrast, the rule by law means that law is used merely as a tool of power by those in authority.⁸ Law enforcement is an effort to realize justice, legal certainty, and legal utility in social life. This process represents the implementation of just law carried out by the government as the holder of authority. The function of law enforcement is to guarantee the rights and freedoms of citizens as members of society protected by the state.

Traditionally, law enforcement institutions in Indonesia include the police, the prosecution service, the judiciary, and advocates, as well as other institutions

⁶ Barda Narawi Arief, *Problems of Law Enforcement and Criminal Law Policy in Crime Prevention* (Kencana Prenada Media Group 2007) 21.

⁷ Agus Rahardjo, *Cybercrime Pemahaman Dan Upaya Pencegahan Kejahatan Berteknologi* (Citra Aditya Bakti 2003) 76.

⁸ Rahardjo (n 7).

such as the Directorate General of Customs and Excise, Taxation, and Immigration.⁹ The judiciary, as a law enforcement institution, performs its functions based on the applicable law. It is important to distinguish that the judiciary refers to the process of adjudicating, whereas the court refers to the institution that carries out that process, alongside the police, the prosecution service, and advocates.¹⁰

Law enforcement officers who assist in the administration of justice to create legal certainty, in addition to the judiciary, include:¹¹

- a. **The Prosecution Service**, based on Law No. 16 of 2005, is a state institution authorized to carry out prosecutions independently. Its duties include conducting prosecutions, enforcing court decisions that have obtained permanent legal force, supervising the implementation of conditional criminal sentences, conducting certain investigations, completing case files, representing the government in civil and administrative matters, as well as maintaining public order and enhancing public legal awareness.
- b. **The Police**, based on Law No. 2 of 2002, function to maintain public security and order, enforce the law, and provide protection, guidance, and services to the community.

The involvement of law enforcement institutions in a complete manner mainly occurs in criminal cases; therefore, judicial institutions are required to ensure law enforcement in both criminal and civil matters. As a state based on the rule of law, the independence of judicial power is guaranteed under the 1945 Constitution and Law No. 48 of 2009. Judicial power is an independent power, exercised by the Supreme Court and the courts under it, as well as the Constitutional Court, to uphold law and justice based on Pancasila and the 1945 Constitution.

In its development, judicial power is exercised through several court jurisdictions, namely the General Courts, Religious Courts, Military Courts,

⁹ Hikmahanto Juwono, 'Law Enforcement in Law and Development Studies and the Foundation for Solutions in Indonesia' (2006) 3 Indonesian Journal of International Law 13.

¹⁰ Santoyo, 'Penegakan Hukum Di Indonesia' (2008) 8 Jurnal Dinamika Hukum 200.

¹¹ *ibid* 203.

Administrative Courts, and Tax Courts, each of which has the authority to adjudicate according to its competence. This is in accordance with Article 24 paragraph (2) of the 1945 Constitution, which states that judicial power is exercised by the Supreme Court and the courts under it, as well as by the Constitutional Court.

The Function of Judicial Institutions as Executors of Civil Court Judgments

The ultimate objective of law enforcement in the judiciary is to ensure justice, protection of human dignity, order, and legal certainty in accordance with the law.¹² Civil dispute resolution in Indonesia still uses the HIR and RBg, which have been in force since the Dutch East Indies period based on the concordance principle, respectively for the regions of Java-Madura (Staatsblad 1848 No. 16) and outside Java-Madura (Staatsblad 1927 No. 227).¹³ In addition, there is the RV, which previously applied to the European group. These three provisions remain in force to this day based on the transitional provisions of the 1945 Constitution.

The HIR, RBg, and Rv in judicial practice have been complemented by various other regulations, such as Law No. 48 of 2009 on Judicial Power and Law No. 14 of 1985 on the Supreme Court along with its amendments. As a result, civil procedural law is now regulated in various legal instruments, and the differences between the HIR, RBg, and Rv are no longer significant because they have been adopted as applicable law.¹⁴

From the perspective of the provisions of the *Het Herziene Inlandsch Reglement* (hereinafter referred to as the “HIR”) Article 178 and the *Rechtsreglement voor de Buitengewesten* (hereinafter referred to as the “RBg”) Article 189, the end of a civil

¹² Muhaimin, ‘The Attorney General’s Office’s Application of the Opportunity Principle Contradicts the Principle of Legality and the Rule of Law’ (2017) 17 *Jurnal Penelitian Hukum De Jure* 20 <<https://lawpolicyjournal.id/index.php/dejure/article/view/133>>.

¹³ Dwi Agustine, ‘Updates to the Civil Procedure Law System’ 6 *Rechtsvinding* 1; ‘Badan Pembinaan Hukum Nasional’ (2017) 1.

¹⁴ ‘In Contrast to the Code of Criminal Procedure Which Is Set out as Positive Law, Namely Law Number 8 of 1981 Concerning Criminal Procedure, the Validity of HIR and Rbg as National Law Has Not yet Been Formally Set out in a Law.’

case examination process in court is marked by the issuance of a judge's decision.¹⁵ Therefore, the winning party in a civil case expects that the court decision can be enforced. Without enforcement, the decision becomes meaningless; thus, measures are required to implement it, namely through execution.

Donald C. Clarke, a scholar of Asian civil law, particularly in Asia, concluded that a judgment that cannot be enforced renders the law meaningless.¹⁶ Therefore, in order to ensure that the law is respected and obeyed by society, a state must have a proper and adequate system of execution procedures.¹⁷

Basically, in general, civil execution in various countries has the same definition. In France, civil execution is known as *procédures d'exécution*, which is defined as follows:¹⁸

The term measures of execution (voies or procédures d'exécution) refers to all legal remedies that are available to unpaid judgment creditors to compel their judgment debtors to pay up, if need be with the assistance of the police.

What is quite unique is that there is a concept of an execution judge, known as the *juge de l'exécution*, whose specific duty is solely to handle civil execution matters.¹⁹ The legal basis for execution in Indonesia is regulated in several provisions, including Articles 195–208, 224, and 225 HIR or Articles 206–240 and 258–259 RBg, Article 180 HIR/Article 191 RBg, Article 1198 of the Civil Code (BW), as well as the Auction Regulation No. 189 of 1908.

M. Yahya Harahap explains that execution is a legal action carried out by the court against the losing party in a case and constitutes a continuation of the procedural rules and process of case examination.²⁰ This explanation emphasizes execution as an integral part of civil procedure, making it inseparable from procedural order. He

¹⁵ Syprianus Aristeus, 'The Ideal Execution of Civil Cases Based on the Principle of Justice and Its Correlation in Efforts to Realize Simple, Fast, and Low-Cost Justice' (2020) 20 *Jurnal Penelitian Hukum De Jure* 379.

¹⁶ Donald C Clarke, *The Execution of Civil Judgments in China, The China Quarterly: China's Legal Reforms* (Cambridge University Press) 65.

¹⁷ Clarke (n 16).

¹⁸ Loïc Cadiet, 'Introduction to French Civil Justice System and Civil Procedural Law' (2011) 28 *Ristumeikan Law Review* 362.

¹⁹ Cadiet (n 18).

²⁰ M Yahya Harahap, *Scope of Civil Law Execution Issues* (2nd edn, Sinar Grafika 2013) 20.

also argues that court involvement in the execution process is intended to protect the parties from legal uncertainty in law enforcement.²¹

Abdul Kadir Muhammad views execution from a more general perspective, defining it as the official enforcement of a court decision under the authority of the Head of the local District Court.²² Meanwhile, Djazuli Bachir defines execution as the implementation of a court decision aimed at ensuring the effectiveness of a ruling that contains an obligation to perform a prestation by force. This coercion, in the form of compulsory measures, is used to realize the rights of the entitled party from the party bearing the obligation.²³

Subekti argues that execution is an effort by the winning party in a judgment to obtain what has become their right with the assistance of legal force, where such force is used to compel the losing party to comply with the contents of the judgment.²⁴ Subekti further explains that execution occurs because the losing party does not voluntarily carry out what has been ordered in the decision. Therefore, the judgment must be enforced against them with the help of legal force.²⁵

Retnowulan Sutantio and Iskandar Oeripkartawinata also agree that execution is a coercive measure. It arises when the losing party does not voluntarily comply with the court's judgment. According to them, legal force with the assistance of the court and, if necessary, the police, is required to carry out the execution.²⁶

Sudikno Mertokusumo further explains that, in essence, execution is the realization of the obligations of the parties to fulfill the performance stipulated in the judgment. This performance refers to the obligations imposed on the losing party as ordered by the panel of judges. Fundamentally, execution can only be carried out if there is a court judgment.

²¹ *ibid* 21.

²² Abdul Kadir Muhammad, *Hukum Acara Perdata Indonesia* (Citra Aditya Bakti 2008) 217.

²³ Djazuli Bachir, *Execution of Civil Case Decisions: Legal and Law Enforcement Aspects* (Akademika Pressindo 1995) 12.

²⁴ Subekti, *Hukum Acara Perdata* (Bina Cipta 1989) 128.

²⁵ Subekti (n 24).

²⁶ Retno Wulan Sutantio and Iskandar Oeripkartawinata, *Penelitian Tentang Perlindungan Hukum Pelaksanaan Jaminan Kredit, Badan Pengembangan Hukum Nasional, Departemen Kehakiman (Hereinafter Referred to as "Retnowulan I")* (1995).

In Canada, the winning party may take several enforcement measures if the debtor fails to pay. These include examining the debtor to determine their financial condition, garnishing wages or bank accounts, seizing and selling assets, and registering the judgment against the debtor's land.²⁷ In this context, the successful party may apply to the court to obtain information on the debtor's finances, enforce against bank accounts, place seizures on assets, and execute against the debtor's land.

Several types of execution are also recognized in Thailand's civil procedural law, namely the Procedural Use of Civil and Commercial Codes Act 1937. Similar to Indonesia, Thailand recognizes execution against the debtor's assets or property, freezing of the debtor's assets, and auction of the debtor's property. Uniquely, it also allows for the takeover of the management of the debtor's property, which in some cases is considered more beneficial than selling the property. All of these measures can be carried out by submitting an application to the court.²⁸

In Japan, there are three types of execution. First, direct execution (*Chokusetsu Kyōsei*), which involves the direct seizure of the debtor's assets. Second, indirect execution (*Kansetsu Kyōsei*), carried out through a court warning accompanied by the threat of fines. Third, substitute execution (*Daitai Shikkō*), in which the court's decision is carried out by a third party at the debtor's expense, such as the demolition of a building. This concept is consistent with the provisions of Article 196 HIR.²⁹

It is therefore important for judicial institutions to carefully observe the principles underlying execution. This is necessary to ensure that execution is carried out properly and to avoid errors that could undermine justice and legal certainty in the law enforcement process.

²⁷ Justice Education Society, *Guidebook for Representing Yourself in Supreme Court Civil Matters*, , Victoria, 2010, h. 6 (The Law Foundation of British Columbia, Victoria 2010) 6.

²⁸ Pornchai Wisuttitak, 'Perkembangan Terkini Hukum Acara Perdata Di Thailand: Gugatan Kelompok Dan Eksekusi Hukum' (2018) 5 Brawijaya Law Journal 200.

²⁹ Junya Naito, 'Enforcement of Judgments' (*Chambers and Partners*, 2021) <<https://practiceguides.chambers.com/practice-guides/enforcement-of-judgments-2021/japan/trends-and-developments>>.

Execution Prior to Final Judgment

A judgment that can be executed prior to obtaining final legal force is known as an *uitvoerbaar bij voorraad* judgment or an immediately enforceable judgment,³⁰ as regulated under Article 180 paragraph (1) HIR, Article 191 paragraph (1) RBg, and Articles 54 and 55 Rv. This type of judgment may be executed despite the existence of legal remedies such as appeal or cassation, particularly when it is based on an authentic deed, a privately executed deed that has been acknowledged, or a judgment that has already obtained permanent legal force.

The requirements for an immediately enforceable judgment include the existence of authentic or written evidence, a prior final and binding judgment, a provisional claim, or a dispute concerning possessory rights (*bezit recht*). The Rv provides legal certainty through clear and strict regulation, whereas the HIR and RBg, reinforced by Supreme Court policies, emphasize justice by requiring the provision of security.

Supreme Court Circular Letter (SEMA) No. 3 of 2000 clarifies that an immediately enforceable judgment may be granted if supported by authentic or written evidence that cannot be refuted, such as in definite debt claims, lease disputes that have expired, division of marital property following a final divorce judgment, provisional claims, cases based on final judgments, and disputes over possessory rights (*bezit recht*).

The regulation of immediately enforceable judgments by the Supreme Court has developed through several Circular Letters, beginning with SEMA No. 13 of 1964, later refined by SEMA No. 5 of 1969, and replaced by SEMA No. 3 of 1971 and SEMA No. 6 of 1975. Currently, the implementation of such judgments refers to SEMA No. 3 of 2000 and SEMA No. 4 of 2001.³¹

³⁰ The change of the term *uitvoerbaar bij voorraad* to a decision immediately was something that was agreed upon in the working meeting of the Supreme Court with the High Courts throughout Indonesia in Jakarta on June 19, 1972 to June 22, 1972. Soebyakto, Execution of a Decision Immediately, A Dilemma, 23 Journal of Law and Development 1993 (527).

³¹ V Brammy Pramduya Bhaktitama and E Sundari, *Perkembangan Pengaturan Putusan Serta-Merta (Uitvoerbaar Bij Voorraad)* (2014).

SEMA No. 13 of 1964 stipulated that if an immediately enforceable judgment is appealed, the case becomes reopened, and execution may create difficulties if the judgment is later overturned by the High Court. Subsequently, SEMA No. 5 of 1969 reaffirmed this provision and granted the High Court authority to examine and decide appeals against such judgments.³²

SEMA No. 3 of 1971 revoked SEMA No. 13 of 1964 and SEMA No. 5 of 1969 and emphasized that immediately enforceable judgments may only be granted if they meet the requirements of Article 180 paragraph (1) HIR and Article 191 paragraph (1) RBg. SEMA No. 6 of 1975 further advised judges to exercise caution and grant such judgments only in urgent circumstances, while considering the necessity of security, which was later reaffirmed in SEMA No. 3 of 1978.

Furthermore, SEMA No. 3 of 2000 introduced more detailed provisions and the obligation to provide security proportional to the object of the dispute to protect the executed party if the first-instance judgment is overturned. This requirement was reaffirmed in SEMA No. 4 of 2001, which prohibits the execution of immediately enforceable judgments without security. The purpose of such security is to ensure legal certainty and prevent losses resulting from wrongful execution.

Nevertheless, in practice, security is not always applied, based on Article 55 Rv, which allows execution without security. In principle, the authority to execute judgments lies with the Head of the District Court. However, since SEMA No. 13 of 1964, the Supreme Court and the High Court have been able to exercise supervision and intervention as part of their oversight function to ensure that the execution of immediately enforceable judgments complies with legal provisions.

Execution of Provisional Judgment (*Provisionil*)

A provisional judgment is requested in a special type of claim, where the plaintiff asks the court to issue an interlocutory decision on the main case or part of it before the final judgment is rendered. In Dutch, this is called *provisionele eis*, and

³² Sarwono, *Hukum Acara Perdata Teori Dan Praktik* (Sinar Grafika 2012) 104.

in English, a provisional judgment.³³

Essentially, a provisional judgment is one type of interlocutory decision. However, in substance, it closely resembles a final judgment. This is reflected in Article 191 paragraph (1) RBg, which states, "...if the prior claim is granted."³⁴ Based on Article 180 HIR, Article 191 RBg, and Article 53 Rv, such judgments are temporary in nature and intended to address urgent legal interests. This institution is also known as *provisionile eis* or *voorlopige maatregelen* (temporary measures). The term *provisionile eis* is also used in Supreme Court Circular Letters (SEMA) No. 4 of 1965, No. 16 of 1969, No. 3 of 2000, and No. 4 of 2001.³⁵

Several scholars have defined provisional judgments. Retnowulan Sutantio and Iskandar Oeripkartawinata define a provisional judgment as a decision issued in connection with the main claim, involving preliminary measures for the benefit of one or both parties. This type of judgment is commonly used in summary proceedings because immediate action is required. For example, when the roof of a rented house is damaged by the defendant during the rainy season, the defendant may be ordered to repair it immediately. Another example is in divorce proceedings, where the wife requests permission to leave the marital residence during the process. Due to its urgent nature, a provisional judgment is always enforceable immediately (see Article 180 HIR / Article 191 RBg).

Sudikno Mertokusumo states that a provisional judgment is a decision on a temporary claim made in the interest of one party before the final judgment is issued. Lilik Mulyadi adds that such judgments are urgent and temporary and are submitted together with the main claim. Provisional decisions are also recognized in arbitration, as stated in Article 32 paragraph (1) of Law No. 30 of 1999, which authorizes arbitrators to issue temporary measures such as attachment orders or

³³ RM Rahyono Abikusno, 'Putusan Provisionil Dan Pengetrapannya Dalam Praktek Di Pengadilan Negeri' (1983) 13 Jurnal Hukum dan Pembangunan 323.

³⁴ M Yahya Harahap, *Hukum Acara Perdata Indonesia (Hereinafter Referred to as "M. Yahya Harahap II")* (1977) 309.

³⁵ Lilik Mulyadi, *Keputusan Hakim Dalam Hukum Acara Perdata Indonesia: Teori, Praktik, Teknik Pengambilan Keputusan, Dan Permasalahan* (Hereinafter Referred to as "Lilik Mulyadi I"). (Citra Aditya Bakti 2009) 41.

custody of goods.³⁶ The content typically includes a request for immediate and urgent action against one party,³⁷ such as temporarily stopping an eviction or prohibiting continued construction on disputed land.

A provisional judgment has a special characteristic in that it must be executed immediately. The HIR does not clearly regulate the procedures for granting or rejecting such requests, and the matter is largely left to the judge's discretion. However, in practice, judges are generally not permitted to grant provisional judgments unless one of the parties formally requests them during the proceedings.³⁸

According to M. Yahya Harahap, a granted provisional judgment must fulfill formal requirements, namely: it must state the reasons and urgency of the request, clearly describe the temporary action requested, and must not address the substance of the main dispute.³⁹

If a provisional claim is submitted, the examination of the main case will be temporarily suspended. The judge will prioritize the provisional claim using a summary or expedited procedure. Although it is intended to be decided immediately, Article 285 Rv allows postponement if the delay does not cause significant or irreparable harm.⁴⁰

In practice, the examination of cases involving provisional claims generally follows three possible approaches. First, if the claim is urgent, the judge may issue an interlocutory decision before examining the main case. Second, if it is not considered urgent or needs to be decided together with the main case, the judge may still issue an interlocutory decision but postpone its consideration until the final judgment. Third, the provisional claim may not be decided separately but instead considered together with the main case, typically reflected in the judgment structure

³⁶ M Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Bukti, Dan Keputusan Pengadilan* (Hereinafter Referred to as "M. Yahya Harahap III") (Sinar Grafika 2005) 885.

³⁷ Mulyadi (n 35) 43.

³⁸ R Supomo, *Hukum Acara Perdata Pengadilan Negeri* (Pradnya Paramita 1980).

³⁹ Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Bukti, Dan Keputusan Pengadilan* (Hereinafter Referred to as "M. Yahya Harahap III") (n 36) 884–885.

⁴⁰ *ibid.*

under sections titled “In Provisional,” “In Convention,” and “In Reconvention”.⁴¹

Based on Article 180 paragraph (1) HIR, a provisional judgment may be executed immediately (*uitvoerbaar bij voorraad*) even if the main case has not yet been decided, provided that it does not prejudice the main case, as emphasized in Article 286 Rv. In deciding a provisional claim, the judge has three possible options: declare it inadmissible if formal requirements are not met; reject it if there is no urgency or relevance to the main claim; or grant it if it meets formal requirements, has urgency and relevance, and is necessary to prevent significant harm.⁴²

Execution of Condemnatory Judgments

A condemnatory judgment is a decision whose operative part orders the losing party (usually the defendant) to perform a legal obligation. Its main characteristic is that it begins with a declaration of rights or legal status, followed by an order imposing an obligation. Such orders may take the form of delivering something, vacating property, demolishing a structure, performing a specific act, or paying a sum of money.⁴³

According to M. Yahya Harahap, a condemnatory judgment cannot stand independently because it always depends on a prior declaratory or constitutive ruling that first establishes the legal relationship or status of the parties. The declaratory or constitutive ruling is an absolute prerequisite before an order of condemnation may be imposed. Conversely, declaratory or constitutive judgments may stand without a condemnatory order; however, in practice, they are less effective because they cannot be enforced if not complied with voluntarily.⁴⁴

As previously explained, in a condemnatory judgment the panel of judges may order the losing party to fulfill certain obligations, such as paying

⁴¹ Lilik Mulyadi, *Klaim Sementara Dalam Hukum Acara Perdata Dalam Praktik Peradilan (Hereinafter Referred to as 'Lilik Mulyadi II')* (Djambatan 1996) 24.

⁴² *ibid.*

⁴³ Harahap, *Hukum Acara Perdata Indonesia (Hereinafter Referred to as "M. Yahya Harahap II")* (n 34) 43.

⁴⁴ *ibid* 884.

compensation for damages suffered or performing a specific act in accordance with the court's decision.

Execution for the Payment of a Sum of Money

In claims based on breach of contract or unlawful acts, the plaintiff may seek compensation in the form of money or the fulfillment of a certain obligation. If the claim is granted and the defendant fails to comply with the judgment, the plaintiff may request execution through the District Court. The execution of monetary judgments is regulated under Article 197 of the HIR and Article 208 of the RBg, generally carried out through the auction of the defendant's assets to satisfy the obligation. If a conservatory attachment had previously been imposed, then once the judgment has obtained permanent legal force, such attachment automatically becomes an executorial attachment.⁴⁵

The execution of monetary payment begins with an application submitted by the plaintiff to the court. If granted, the court will issue a warning (*aanmaning*) to the defendant to comply with the judgment within a maximum warning period of eight days in accordance with Article 196 of the HIR and Article 207 of the RBg. If the defendant still fails to fulfill the obligation or does not appear, the court will issue an order of executorial attachment (*executoriale beslag*) against the defendant's assets pursuant to Article 197 of the HIR and Article 208 of the RBg.⁴⁶

Executorial attachment is essentially the seizure of the assets of the defendant

⁴⁵ This is in line with the regulation of collateral confiscation in Article 227 Paragraph (1) HIR which regulates:

"If there is a reasonable suspicion that a person who is in debt, before the decision has been made or while the decision against him has not yet been executed, is trying to embezzle or take away his goods, whether immutable or permanent, with the intention of keeping the goods away from the debt collector, then based on a letter of request from the person concerned, the head of the state can give an order for the goods to be confiscated in order to protect the rights of the person making the request, and the requester must arrive in the first country for the claim".

Collateral confiscation is a legal effort to temporarily release ownership rights to goods controlled by the defendant in order to guarantee the implementation of the decision in the future. Based on this article, the requirement for an application for confiscation of collateral is that there is sufficient suspicion that the defendant will embezzle the goods so that they cannot be executed in the interests of the plaintiff.

⁴⁶ *ibid.*

or the losing party after the expiration of the warning period. Its primary purpose is to secure a guarantee of payment for the winning party. Furthermore, executorial attachment serves as a mechanism to enforce the payment of the sum awarded in the judgment by auctioning the defendant's assets that have been placed under attachment.⁴⁷

The execution of attachment by the court clerk or bailiff must be conducted in the presence of two witnesses as required under Article 197 paragraph (6) of the HIR and Article 210 paragraph (1) of the RBg; without witnesses, the execution is formally defective and invalid. Witnesses not only observe the process but also assist in its implementation and sign the official report. They must be Indonesian citizens, at least 21 years of age, honest, and trustworthy. In practice, courts usually appoint witnesses from within the court environment, as they are considered to have a better understanding of legal aspects.⁴⁸

Executorial attachment may only be carried out at the location where the property is situated, in accordance with Article 197 paragraphs (5) and (9) of the HIR. The court clerk or bailiff, together with the two witnesses, must be physically present to carefully examine and verify the identity and legal status of the property. Such certainty must be based on direct and clear observation, rather than mere assumption, to avoid errors in identifying the object of execution.⁴⁹ The clerk and bailiff must also ensure that the property to be seized indeed belongs to the defendant.

Once the executorial attachment has been imposed, the Chief Judge of the District Court will order the auction of the defendant's assets, prioritizing movable property. If the proceeds are insufficient, immovable property may also be seized in accordance with Article 197 paragraph (1) of the HIR and Article 208 paragraph (1) of the RBg, except for items that constitute the defendant's primary means of livelihood. The value of the seized property must not exceed the amount awarded

⁴⁷ Harahap, *Hukum Acara Perdata Indonesia (Hereinafter Referred to as "M. Yahya Harahap II")* (n 34) 68.

⁴⁸ *ibid* 79.

⁴⁹ *ibid*.

in the judgment, and any excess must be adjusted accordingly.

Furthermore, the court clerk or bailiff is required to prepare an Official Report of Execution as valid proof of the attachment. This document contains the identity of the witnesses and all details of the execution process to ensure its legality and legal certainty.⁵⁰ The report must include, among other things, a list, type, size, and location of the seized property; the presence of the losing party; confirmation of the safeguarding of the property; information if the property is not found or the attachment cannot be carried out; and the date of execution.⁵¹

After the Official Report of Execution has been completed, it must be signed by the court clerk or bailiff and the two witnesses as proof of validity, and subsequently notified to the losing party, either at the place of attachment or at their domicile. Thereafter, the seized assets are auctioned through the auction office in accordance with Article 200 of the HIR. The auction is conducted to satisfy the obligation stipulated in the judgment, subject to conditions such as prior public announcement, implementation at least eight days after the attachment, the order of auctionable property may be determined by the affected party, and termination once the obligation has been fully satisfied. After full payment, the buyer acquires legal rights over the property, and in the case of immovable property, the losing party is required to vacate it voluntarily or will be compelled to do so by court order.⁵²

Real Execution to Perform a Specific Act

Real execution is the direct enforcement of the operative part of a judgment through concrete action. Although it is not regulated in the HIR and RBg,⁵³ its

⁵⁰ *ibid* 83.

⁵¹ *ibid*.

⁵² Vina Putri Salim and Bambang Sugeng Ariadi Subagyo, 'Keabsahan Lelang Non Eksekusi Sukarela Secara Online Tanpa Pejabat Lelang' (2022) 5 Notaire.

⁵³ Rv. is essentially a regulation containing provisions of civil procedural law that applies exclusively to Europeans and those who are considered equal to litigate before the Court of Justice and the Residential Court. According to Supomo, after the abolition of the Court of Justice and the Residential Court, Rv. is no longer applicable in Indonesia, leaving the HIR and RBg as the remaining valid ones. However, in general practice, the existence of Rv. is still used and maintained by the District Court, High Court, and Supreme Court.

provisions are found in Article 1033 of the Rv, which states that if the condemned party does not vacate immovable property, the Chief Judge of the Court may order the Bailiff, with the assistance of state authority, to forcibly evict the person along with their occupants and belongings.

Mohammad Saleh argues that real execution is not regulated in the HIR and RBg because.⁵⁴ in principle, its implementation is simple and does not require complicated procedures. For example, in the execution of land eviction, the court can directly vacate the object in a straightforward manner.

Article 1033 of the Rv regulates situations where the losing party does not voluntarily vacate immovable property as ordered in the judgment. However, if there is a tenant occupying the property, they cannot be immediately evicted due to the principle of *koop breekt geen huur*, meaning that a sale does not terminate a lease agreement.⁵⁵

Real execution is generally carried out in the form of demolition, delivery, or vacating of property. In addition, real execution may also occur in relation to property auctioned for debt payment, for example, when the losing party refuses to vacate the auctioned object (Article 200 paragraph (1) of the HIR and Article 218 paragraph (2) of the RBg). Based on Article 196 of the HIR, execution is carried out upon the request of the winning party if the losing party does not voluntarily comply with the judgment, allowing the court to enforce execution in accordance with legal procedures.⁵⁶

The procedure for real execution is essentially similar to the execution for payment of money, except that it does not involve an auction and instead directly enforces the operative part of the judgment. In general, the stages include: submission

⁵⁴ Mohammad Saleh, *Penerapan Asas Peradilan, Sederhana, Cepat Dan Biaya Ringan, Pada Eksekusi Putusan Perkara Perdata* (Graha Cendikia 2001) 128.

⁵⁵ This is in line with the provisions in Article 1576 of the Civil Code which stipulates: "With the sale of the leased goods, a previously made lease is not terminated unless this has been agreed upon at the time of leasing the goods. If there is such an agreement, the lessee is not entitled to claim compensation if there is no express promise, but if there is such a promise recently, he is not obliged to vacate the leased goods, as long as the compensation owed has not been paid in full".

⁵⁶ Saleh (n 54) 129.

of an execution request, *aanmaning* (warning), issuance of an execution order by the Chief Judge of the District Court, execution by the Court Clerk or Bailiff in the presence of two witnesses, preparation of the Official Report of Execution, and notification to the parties.

Furthermore, there is also execution to compel the performance of a specific act (Article 225 of the HIR and Article 259 of the RBg). If the losing party refuses to perform the act, the Chief Judge of the District Court may substitute it with an obligation to pay a sum of money of equivalent value. The process begins with an application for substitution, determination of the amount by the court, *aanmaning* (warning), executorial attachment, auction, and payment of the auction proceeds to the winning party.

Execution of Settlement Judgments

Civil disputes may be resolved through litigation or outside the court, but settlement is the most preferred method. Judges are required to first attempt reconciliation between the parties (Article 130 of the HIR and Article 154 of the RBg), and the result must be set forth in a deed of settlement (*akta perdamaian*) (Article 1851 of the Civil Code/BW). According to Article 1851 of the BW, a settlement is an agreement between the parties to end or prevent a dispute by mutually giving, promising, or withholding something.⁵⁷

The obligation to pursue settlement before rendering a judgment is also regulated in Article 10 paragraph (2) of Law No. 48 of 2009, which may be carried out at any stage of the proceedings. The procedure is governed by Supreme Court Regulation (PERMA) No. 1 of 2016 through mediation mechanisms. Thus, the Supreme Court integrates alternative dispute resolution (non-litigation), namely mediation, into the judicial process (litigation) as a means of achieving settlement

⁵⁷ Heru Guntoro, 'Pentingnya Penyelesaian Perkara Perdata Dengan Jalan Perdamaian' (2007) 2 Penelitian Hukum Persada 4.

through court-annexed mediation.⁵⁸

Article 1 point 10 of PERMA No. 1 of 2016 stipulates that the result of mediation shall be set forth in a deed of settlement, which contains the settlement agreement and is confirmed by a judge's decision. Mochammad Djais and RMJ Koosmargono also state that examining a case without first attempting settlement may render the proceedings null and void by law.⁵⁹ Mochammad Djais and RMJ Koosmargono also state that examining a case without first attempting settlement may render the proceedings null and void by law.⁶⁰

The HIR, RBg, and BW provide that a deed of settlement must fulfill formal requirements, namely that it must be voluntarily agreed upon by both parties to resolve the dispute without intervention or coercion by the judge.⁶¹ This agreement is subject to Article 1320 of the BW, which requires consent of the parties, legal capacity, a certain object, and a lawful cause.⁶² Therefore, the deed of settlement is subject to the general principles of contract law under the BW, and any violation of these principles may render it defective and not legally binding.

The second requirement is that a settlement judgment (*akta van dading*) automatically and voluntarily terminates the dispute, and the parties are obliged to perform it in accordance with its contents. This judgment is final and cannot be appealed or challenged in cassation (Article 130 paragraph (3) of the HIR), and if the same case is refiled, it will be declared *nebis in idem* and inadmissible.⁶³

The third requirement is the existence of a genuine civil dispute. A settlement is invalid if the parties are not actually involved in a dispute. Based on Supreme Court Decision No. 169K/Sip/1962, a deed of settlement applies only to clear civil disputes, not to matters still under examination in other processes, such as police

⁵⁸ Abdul Halim, 'Konstektualisasi Mediasi Dalam Perdamaian, Badilag', <www.badilag.net>.

⁵⁹ Ghansham Anand and Ajrina Yuka Ardhina, 'Itikad Baik Dalam Proses Mediasi Perkara Perdata Di Pengadilan' (2018) 1 Media Iuris 203.

⁶⁰ Mochammad Djais and Koosmargono, *Membaca Dan Mengerti HIR* (UNDIP 2010) 41.

⁶¹ Harahap, *Hukum Acara Perdata Indonesia (Hereinafter Referred to as "M. Yahya Harahap II")* (n 34) 195.

⁶² *ibid.*

⁶³ Guntoro (n 57) 9.

investigations, which are not yet certain to constitute civil disputes.⁶⁴

The fourth requirement is that the deed of settlement must be made in writing in accordance with Article 1851 of the BW. If it is made only orally, it is formally defective and invalid. If all requirements are fulfilled, the settlement judgment becomes valid and has permanent legal force equivalent to a final court judgment (*res judicata*), cannot be appealed or challenged in cassation, and has executorial force (Article 1858 of the BW, Article 130 of the HIR, and Article 154 of the RBg).

According to Abdul Manan, the settlement agreement is made by the parties and then submitted to the judge for confirmation so that it has executorial force.⁶⁵ The judge may not add to, alter, or reduce the contents of the settlement deed but must accept it in its entirety. Based on the settlement, the judge then renders a judgment ordering the parties to perform the contents of the agreement they have made.⁶⁶

According to Yahya Harahap, a settlement judgment containing a deed of settlement has executorial force. If one party defaults, the other party may directly file a request for execution without filing a new lawsuit, because a settlement judgment is equal in status to a final and binding judgment. Therefore, a settlement judgment binds the parties, cannot be unilaterally revoked, and must be fully implemented.

Execution of Multiple Judgments Simultaneously

Simultaneous execution of multiple judgments refers to execution requests filed by several creditors against a single debtor at the same time. Each execution request is based on a judgment that has obtained permanent legal force or on an instrument that has equivalent value to a final and binding judgment.⁶⁷

⁶⁴ Harahap, *Hukum Acara Perdata Indonesia (Hereinafter Referred to as "M. Yahya Harahap II")* (n 34) 294.

⁶⁵ Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama* (Al Hikmah 2000) 98. (Hereinafter referred to as "Abdul Manan I")

⁶⁶ Retnowulan Sutantio and Iskandar Oeripkartawinata, *Hukum Acara Perdata Dalam Teori Dan Praktek* (Mandar Maju 2007) 13. (Hereinafter referred to as "Retnowulan II")

⁶⁷ Harahap, *Hukum Acara Perdata Indonesia (Hereinafter Referred to as "M. Yahya Harahap II")* (n 34) 274.

M. Yahya Harahap argues that simultaneous execution of several judgments at the same time constitutes execution for the payment of a sum of money.⁶⁸ The reason real execution cannot be requested simultaneously by several persons is because it is practically impossible to implement. Essentially, each real execution requested against the same person by different parties should stand independently in relation to the specific object disputed in each respective case.

Based on Articles 201–202 of the HIR and Articles 219–220 of the RBg, there are two methods for simultaneous execution of several judgments against one debtor. First, by seizing and auctioning the debtor's property simultaneously for the benefit of all creditors. Second, by combining the auction proceeds, including those from later execution requests, and distributing them proportionally among all creditors.

The elements include: there is only one debtor, there are multiple creditors, each creditor has a final and binding judgment, and execution requests are submitted simultaneously or subsequently while the auction process is ongoing.⁶⁹

In essence, simultaneous execution of several judgments is an execution for the payment of a sum of money filed collectively by several creditors. The court then conducts a single execution seizure, prepares one official report, and holds one auction, with the proceeds distributed proportionally according to the amount of each creditor's claim.

Furthermore, if after the execution seizure has been carried out another execution request arises before the auction is conducted, the seizure also applies to the new creditor. If the seized assets are insufficient, the court may order an additional seizure to ensure that all claims and execution costs are satisfied.

If after the execution seizure another creditor files an execution request, the District Court is obliged to include that creditor in the seizure so that all creditors receive legal protection. The creditors will then jointly receive the auction proceeds, distributed proportionally based on the amount of their respective claims.

⁶⁸ *ibid.*

⁶⁹ *ibid* 276.

To determine the respective shares, the court summons the debtor and the creditors to hear their statements and then determines the portion for each creditor. This determination serves as the guideline for the auction officer in distributing the proceeds of the sale.

Conclusion

The accountability system for the execution of judgments carried out by the Chief Judge of the District Court, assisted by the court clerk or bailiff, in practice has not yet been able to meet public demands for an execution institution that is independent, autonomous, professional, and possesses integrity, capable of realizing the principles of a fast, simple, low-cost, and complete judicial process in order to achieve justice, legal certainty, and legal benefit for justice seekers.

One of the main causes of the inefficiency and ineffectiveness of the execution process is the accumulation of workload on the Chief Judge of the District Court, who on the one hand serves as a judge performing judicial functions and, on the other hand, carries out administrative duties as the head of the District Court with his own separate responsibilities.

In addition, the qualifications, requirements, and number of bailiffs, who serve as the spearhead of execution implementation in the field, also affect the process. There are judicial and non-judicial factors, as well as internal and external factors, in the execution of civil cases that result in prolonged execution processes, requiring a long time and significant costs. These facts confirm that the civil execution system in Indonesia has not yet been able to guarantee legal certainty, justice, and legal benefit for litigating parties, nor fully realize the principles of a fast, simple, low-cost, and complete judicial process.

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