

Supervision of Fair Execution for Civil Case Decision

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Abstract

Civil law as a system aims to resolve the conflict of interests that occurs between the parties in the communities. For that reason, execution as a subsystem constitutes the whole provision of the execution of regularly organized court decisions, in order to achieving justice, humanity and legal certainty. The type of research is normative and empirical research. Results of the research shows that the implementation of real execution as exercised by the district court for civil case decision has not reflected the value of justice, humanity and legal certainty. Given a case of land clearance is a complicated case to be resolved, and through the regulation of the Supreme Court needs to be regulated on the carefulness principles in the execution. The continual of real execution due to the resistance of one party through judicial review legal remedies. Therefore, the chief of justice should consider the basic reasons for the judicial review that must comply with one of the reasons prescribed by the law and the reasons for the proposed judicial review are supported by clear, complete facts or evidence. It makes it easy to judge whether proper or not to postpone execution for reasons of judicial review.

Keywords: Court, Execution, Supervision, Civil Case Decision

1. Introduction

Human is a social creature created by God almighty to live in society and interact each other. In social life cannot be denied between one human with another often arises a friction of interest. Occasionally, this friction of interest between them (the related parties) to feel disadvantaged so that they filing a lawsuit to the court. Such lawsuits is justified and regulated in the provisions of civil procedure law that aimed to obtain protection of the rights granted by the courts in order to prevent persecution (*eigenrichting*) (Mertokusumo, 1989).

As the civil law, the parties filing the lawsuit to the court expect their suit come to the verdict of a permanently binding. The verdict will have a permanent legal binding if there is no appeal against the adjudication of the first court, *verzet*, decision of appeal not followed by appeal, and cassation. For a verdict with a permanent legal binding can be executed because no execution it means the case is considered unfinished.

Although the judge' verdict has been enforced and has a permanent legal binding, it shall not necessarily be executed immediately, but at least must meet the principles of the execution, as mentioned by Harahap (2006) as follows: a) the verdict has an permanent legal binding or *inkracht*; b) verdict is not enforced voluntarily by the executed party; c) the verdict must be punishment (*condemnatoir*); d) the execution shall be in accordance with the dictum; and e) execution as the command of the chief justice. If all elements of the execution principles are fulfilled then an execution can be enforced and certainly it begins with the appeal of the execution party to the chief of the local district court.

This execution process is a legal tool of civil cases that are needed in replying and solving various problems that occur in the community. Civil law as a system aims to resolve the conflict of interests that occurs between the parties in the communities. For that reason, execution as a subsystem constitutes the whole provision of the execution of regularly organized court decisions, in order to achieving justice, humanity and legal certainty.

An important thing governed by civil procedure law is an execution as a legal action perpetrated by the court by force to the defeated party in a case. The execution of civil cases in a civil justice system by the general justice body is outside the dispute process. The law governing execution is part of a civil procedure law which is at the end of the proceeding process which is basically not handled by the judge who initially decided upon the case. As a rule and advanced procedure of the process of cases examination is a continuous action of the whole process of civil procedure law.

Execution as a forced act of a verdict of permanent legal binding is a legal option if the defendant party does not want to execute or fulfill the content of verdict voluntarily. If in fact the defendant or defeated party is willing to obey and fulfill the verdict voluntarily, then the forced act of execution (real) is not necessary. Therefore, it must be distinguished between voluntary execution and forced executions (real).

In the voluntary execution, the defeated party (the defendant) meets perfectly with the content of the court verdict. Defendants without any coercion from any party fulfill the legal relations as imposed. By voluntary execution, the defendant perfectly fulfills all the obligations and legal burdens as contained in the verdict. Given the defendant voluntarily fulfills the content of the verdict to the plaintiff, it means the contents of the verdict has been executed and by itself there is no need for any further forced execution to execute the content of the verdict to the defendant.

That is why, the execution in a civil case begins appears and functions if the defendant is unwilling to obey and execute the verdict voluntarily. The defendant is unwilling to fulfill voluntarily will result in legal consequences of forced action in the form of execution. Executions are carried out in order to effectively make a decision as achievement, and if necessary forced assistance through State tools. The forced action is solely intended to realize the verdict, because parties or one of the parties in a court verdict are unwilling to obey it voluntarily. Nevertheless, in implementing the court's verdict or conduct executions, should give attention and not ignore Article 54 Paragraph (3) of Act No. 48 of 2009 on Judicial Power, which states that "*the verdict of courts is conducted with due regard to humanity and justice.*"

In practice, the execution of court verdict is not as easy as one might imagine. There are several cases that have had permanent legal binding, but have constraints and obstacles in its execution. The constraints and obstacles to executing as found by the author among others, it caused by the resistance of the defeated party (requested execution) by doing anarchist deeds against officers who want to execute. There are even executions that cannot be executed because the execution requester cannot afford to pay the execution fee, because the cost is very large, whether the cost requested by the court for execution and the costs required by the police to secure the execution.

The reality of this problematic like obstacles to the execution of the verdict gives an indication of the lack of supervision over the execution of the decision of the local district court. Although the authority to order and lead the execution is on the chief justice of the district court, it is less effective in its implementation. By the presence of the execution order in the form of a letter of appointment, the clerk or bailiffs know in detail the limits of execution to be executed.

As the empirical facts, it indicates that there is a legal phenomenon has been a court decision that has been legally binding. However, in reality, cannot be executed with various reasons, considerations and factors that influence it, particularly as a result of ineffective supervision over execution to be executed. Therefore, this research can reveal the variables and indicators that cause why the supervision of the justice- execution of the verdict of civil cases has not been implemented properly.

2. Method of Research

The research is a normative and empirical legal research. A normative legal research is used to observe various related regulations and various legal documents. While, an empirical legal research are used for factual conditions or data obtained from the field to provide answers to existing problems by linking to facts or phenomena about supervision of justice-execution of civil case verdicts. This research was conducted in South Sulawesi Province, Indonesia. Precisely at Makassar High Court and 4 (four) District Courts, namely the Makassar District Court, Sungguminasa District Court, Pare-pare District Court and Palopo District Court. The reason for the selection of 5 (five) research locus is based on the consideration that the problem of supervision of the justice-execution of the verdict of civil cases has increased significantly compared with other regions. Even in reality there is often an execution without supervision that causes frequent occurrence of conflict and anarchist actions and causing loss and victims.

3. Meaning of Execution in A Verdict of Civil Case

a. Value of Justice

Main philosophy of the essence of law is justice, without legal justice is not called as a law (Susanto, 2010). In the science of philosophy, justice has been the subject of serious discussion since the beginning of Greek philosophy. Discussions of justice have a wide scope, from ethical, philosophical, legal, to social justice. Many people think that fair and unfair action depends on strengths and owned strengths, to be fair is quite easy, but certainly it not so in human life. Justice becomes an integral part of the objectives of the law itself, in addition to legal certainty and expediency.

The concept of justice or equality is very important in every judiciary. As a judiciary that exercises judicial power, judges must be able to provide justice or fair to the justice seekers, so the verdict of judge is also defined as the justice given by the judge to the justice seeker after going through the proceedings in the trial.

Talking about justice, the Indonesian nation recognizes that absolute justice exists only in the Supreme God. The first precept of Pancasila is the concept of actual justice. In the position of Pancasila as a system of philosophy

where between one precepts to other are interrelated. To understand the linkage between one precept and other, the sense of understanding in this case is a complete understanding. Certainly, it is impossible to understand social justice in accordance with the Indonesian human life view, regardless of its religious nuance based on the belief in the one Supreme God, as well as if not understanding the just and civilized humanity within the unity of Indonesia that all things are decided upon and governed by the popular principle which is led by the wisdom in representatives' deliberations. All of the highest virtues and morality that have been ratified into all the laws of Indonesia can also be interpreted as the ultimate agreement between the Indonesian people to establish an aspiring Indonesian state, bringing about social justice for all societies.

Viewed from the point of view of the philosophy means the judge is the "representative of God" for conveying the truth and justice, then every the verdict of judge must include "*For Justice by the One Supreme God*". This is reinforced in Act No. 48 of 2009 on Judicial Power, Article 2 paragraph 1 which provides clues that for a good and just verdict can be seen in every title of decision or verdict in the sentence which states "*For Justice by the One Supreme God*", it means that if the judge wants to decide a case must be based on a sense of justice, where this sense of justice to be accountable to God almighty, in accordance with the value of Pancasila from the first precept.

According to Mustafa Bola (2017) that principally, there are 3 (three) of the duties of judge, namely: 1). law enforcement, 2). legal discovery, and 3). legal development. The third of duties to be realized, its foundation is a morality where the judge in every verdict should be able to provide a sense of justice for the community. If look at the facts that exist in the community against the verdict of judge always raises two opposing groups, *pros* and *cons*. *Pros* always praise and consider the verdict of judge is fair because it has been in accordance with their interests, while the *cons* is always criticizing and even blasphemous because the judge has ignored the sense of justice for their interests. Whereas the judge has tried hard to mobilize all his/her ability to give a verdict that satisfies the sense of justice for the justice seeker, because the duty and the function of the judge are to enforce the truth and justice.

The verdict of this judge is more emphasis on the element of justice, does not mean that there is no legal certainty and expediency, the element of legal certainty and expediency remain in the verdict of judge. The fulfillment of the element of legal certainty can be seen as this verdict has provided a way out of legal problems for both parties, the verdict of judge is based on the law, and has provided equal opportunities for the litigant. While in this verdict, the fulfillment of expediency has created satisfaction for the litigants and resolving the polemic or conflict for disputed and recover the right of the winner.

Each judge's decision should be assessed as a justice-verdict; a justice is one of the most widely discussed legal objectives. In the case of execution, justice becomes important to be realized in every execution of the order that ordered to be executed. In execution, it is not necessarily every righteous decision at the same time also execution can be said to be just or fair. The execution is just if the defeated party voluntarily executes a court verdict on the execution order.

Upholding the value of justice concerned is balance, namely the balance for the execution requester and the requested in the process of civil execution. Table 1 indicates the opinions of respondent concerning the implementation of the value of justice in real execution by the district court.

Table 1. Value of justice in real execution

No.	Statement	Frequency	Percentage
1.	The execution of justice value in real execution	15	37,50 %
2.	The lack of execution of justice value in real execution	23	57,50 %
3.	No execution of justice value in real execution	2	5
Total		40	100

Source: Primary data, 2017 (edited).

As the questionnaire data, 57.50% of respondent stated that the lack of execution in real execution, 37.50% stated that the principle of justice in real execution had been executed, and 5% stated that the principle of justice in real execution was not exercised.

Various cases in the execution of the verdict, such as land disputes with Freehold No.21221/Kelurahan Tamamaung, Kecamatan Panakkukang, Kota Makassar, width 5000 m² (five thousand square meters), between plaintiff Nony Meywati Binti Parawansyah and defendant Pettaranian 2F. Decision of Makassar District Court No. 233/Pdt.G/2005/PN. Mks. Then, land dispute case, Palopo District Court made a mistake in the execution of 25.5 hectares of land in Kelurahan Sampoddo, Kecamatan Wara Selatan, Kota Palopo, so it was protested by some residents because some executed land by the Palopo District Court was object wrong. Alleged dispute land of object wrong, one of them is SPBU Sampoddo that has a certificate from the National Land Agency of Palopo.

Both of these cases received resistance from the community (the requested) because the execution was not in line with the values of justice.

Implementation of real execution is one of the most important parts of civil cases after a permanent legal court ruling (*incracht van gewijsde*). The real execution on the winner of case will be able to obtain their right as decided by the court. However, the implementation of the real execution does not neglect the rights of the requester for execution. Implementing the verdict voluntarily means losing parties, actually accepting and fulfilling the verdict without being forced by the court. However, in reality the rulings of many judgments are not implemented or voluntarily realized by the defeated party, this is where the implementation of the new decision is said to be functioning.

In fact, sometimes there are items belonging to the requested party that have not been issued. Actually, demolition are directly related to the matter of placement or storage, because the demolition material is the right of the executed (losing party), which must be protected on every execution of demolition. Although the losing party does not mean that their property is not protected. If at the time of the execution of the executed party's property rights executed on the executed object, their property must be protected.

The verdict of judge is an engineering statement made by a judge as a state official authorized for it and pronounced in court for the purpose of terminating or settling a case between the dispute parties. Besides spoken by the judge, this should also be poured in a written form which is then uttered by a judge in a court which is considered a verdict of judge.

b. Value of Humanity

Pancasila as an ideology of the Indonesian nation mandates clearly the meaning of human value. The meaning in question, that the value of humanity is just and civilized which contains the legal understanding that every citizen of Indonesia prefers the principle of a just and civilized humanity in the life of society. The second precept of Pancasila, is just and civilized humanity, implies that Indonesian citizens recognize the existence of dignified human beings (dignified are human beings who have a position, and a higher degree and must be maintained with a decent life), treats people justly and civilized where humans have the power of creation, sense, intention, intention and desire so that there is a clear distinction between humans and animals, which in the formation of the law must show the character and legal characteristics of the civilized human itself.

So, this second precept of Pancasila wants citizens to treat and respect the position of every human being with the advantages and disadvantages of each, every human being has the right to have a decent life and act honestly and use the norms of manners in the association of fellow human beings. Table 2 indicates the opinions of respondents concerning the implementation of humanity value in real execution by the district court.

Table 2. Value of humanity in real execution

No.	Statement	Frequency	Percentage
1.	The execution of humanity value in real execution	19	47,50 %
2.	The lack of execution of humanity value in real execution	21	57,50 %
3.	No execution of humanity value in real execution	-	-
Total		40	40

Source: Primary data, 2017 (edited).

Based on data above that from 40 respondent shows 47.50% states the principle of humanity value is executed in real execution, 52.50% states the lack of humanity value in the execution of real execution. Based on Act No. 48 of 2009 on Judicial Power, article 54 Paragraph 3 that the verdict of court is carried out by considers the value of humanity and justice. This is in accordance with the value of humanity contained in the second precept of Pancasila, the value of humanity that the decision must really humanize human beings both in consideration, as well as the execution of its verdict.

The judge in verdict must be based on a clear consideration in accordance with Article 53 paragraph 2 of Act No. 48 of 2009 on judicial power that the determination and decision as referred to in paragraph (1) shall contain judicial considerations based on reason and basis the right and right laws. It is therefore important for judges to consider the value of humanity, without prejudice to existing laws or legislation.

The application of humanity for execution is temporary, usually limited to three or six months, or within a reasonable time according to circumstances. The goal is only to provide relief to the executed party and released from afflict. Thus, the postponement of execution with the value of humanity should not be permanent, only limited in a relatively short time. If the specified time limit has passed, execution must be executed without needing any more warning, as it is also for the legal certainty of the winning party.

c. Value of Legal Certainty

In constitutional as mentioned in the 1945 Constitution, Article 28 D, that everyone is entitled to recognition, guarantee, protection and legal certainty and equal treatment before the law (Badriah, 2010). This legal certainty contains a principle of balance and contains an integrative concept (Wantu, 2012). The legal certainty as set forth in the verdict of judge is a result based on judicial facts relevant to the jurisdiction and considered with conscience. Judges are always required to always be able to interpret the meaning of the law and other rules that serve as the basis for applied. The application and legal considerations must be in accordance with the case, so that the judge can construct a case that is tried entirety, wisely and objectively.

The verdict of judge containing the element of legal certainty will contribute to the development of science in the field of law. This is due to the verdict of a judge who already has permanent legal power, no longer the opinion of the judge himself who decided the case, but it is the opinion of the court institution and become the reference of society in the daily relationship. Legal certainty demands legal regulatory efforts made by authoritative and authoritative bodies so that they have a juridical aspect that ensures that the law functions as a rule to be obeyed.

The legal certainty of the constitutional state (*rechtstaat*) in the continental Europe system (civil law) sees the legal positivism as a top priority, although it is felt to be very unfair, but at least raises legal certainty in the sense of *law in the books*. Whether the legal certainty in the meaning of law in the books will be substantively implemented, then to answer it depends on the law enforcement apparatus itself. Although lawn in the books reflect a legal certainty, but if the law enforcement apparatus itself does not perform its duties and functions in accordance with the applicable law, it is still said there is no legal certainty.

For example, in deciding a civil case, the judge should consider the principles, norms and provisions of civil law as well as legal principles in civil procedure law so as not to issue a verdict that does not guarantee justice and legal certainty. Sometime in a particular case the judge handed down a different ruling on the basis of his/her consideration with another case when the qualification of the case almost similar.

Therefore, Sutiarmo (2011) suggests that justice-based legal certainty should always be instilled in order to create a timely legal culture, so that legal certainty will be more effective if law enforcers familiarize to cultivate the rule of law with certainty, indiscriminate, in accordance with the principle of equality before the law against all those who represent a picture of legal certainty.

For that, the law or judge's verdict must be firm in the community, contain openness so that anyone can understand the meaning of a legal provision. Laws with one another should not be contradictory so as not to be a source of doubt. Legal certainty is a legal instrument of a state that contains clarity, does not create multi-interpretations, it is not contradictory and can be implemented, which is able to guarantee the rights and obligations of every citizen in accordance with the culture of the existing society. Table 3 indicates the opinion of respondent on the implementation of legal certainty value in real execution by the district court.

Table 3. Value of legal certainty in real execution

No.	Statement	Frequency	Percentage
1.	The execution of legal certainty value in real execution	29	72,50 %
2.	The lack of execution of legal certainty value in real execution	11	27,50 %
3.	No execution of legal certainty value in real execution	-	-
Total		40	40

Source: Primary data, 2017 (edited).

Based on data from 40 respondents indicates that 72.50% of respondents state the execution of legal certainty value in real execution, and 27.50% states the lack of execution of legal certainty value in real execution. The verdict of judge containing the element of legal certainty will contribute to the development of science in the field of law. This is due to the verdict of a judge who already has permanent legal power, no longer the opinion of the judge itself who decided the case, but it is the opinion of the court institution and became the reference of society in daily interaction (Wantu, 2012).

4. Effective and Justice-Execution Supervision

Execution is an important part of law enforcement and compliance. Certainly, legal compliance should not be solely based on the forced efforts made by the court apparatus by asking for state assistance. Legal compliance is also required in the sense of how the parties concerned or asked in a judicial process to be able to follow the course of the judicial process well.

The problem of execution is one of the problems in legal compliance. To enforce the law is also largely determined by the legal compliance of the parties concerned. Legal compliance indicators of the parties in the trial process cannot be seen merely whether the defendants are obeying execution voluntarily or not, but more complex is how the parties involved in the proceedings or related to the implementation of the course of the judicial process are able to adhere and follow the stages or proceedings well and correctly. At this point supervision is required to avoid mal-administration in execution.

Institutionally, the exercise of judicial power as mentioned above is carried out by a Supreme Court and the lower courts within the general judiciary, the religion judiciary, the military judiciary, the administrative judiciary, and by the constitutional court. In reality, however, the judiciary as a justice enforcer who exercises judicial power has been heavily criticized by the public. Criticism is much given to the poor performance of law enforcement agencies who served to fight for justice.

Supervision as a form of checks and balances, according to Act No. 35 of 1999 that has been amended to Act No. 48 of 2009 on Judicial Power states that to create checks and balances within the judiciary it is necessary to make the court decisions publicly available and transparent by the community. It embodies the principles of good governance. Public participation in judicial supervision is one of the forms of good governance. For according to the World Bank, some characteristics of good governance are strong and participatory civil society, open, predictable policy-making, responsible executives, professional bureaucracies and rule of law.

Related to the duties of supervision in order to maintain and uphold the honor, dignity and behavior of judges, the judge is required to uphold the honor, dignity, and conduct in exercising his/her authority and duties as the organizer of the judicial power. In addition to not tarnishing the honor and dignity of his dignity, a judge must demonstrate virtuous behavior of noble character. Behavior can be interpreted as an individual response or reaction to stimuli to the environment. Judge behavior can lead to confidence, but also leads to public distrust of court decisions.

People dissatisfaction with the decision of court is partly due to the fact that rulings are often considered unfair, controversial, and cannot even be legally executed. This situation requires the judge to truly have integrity and personality that is not blameworthy, honest, fair and professional in order to build and foster public trust. Supervision is one of the main functions of management to maintain and controls the tasks that must be implemented can run properly in accordance with the plans and rules that apply. The sense of supervision provides an understanding that the oversight of judge attempts to correct misdeeds of the duties and functions of the judge and therefore must be returned on the right track.

The supervision of the judge checks whether the work performed by the judge has been in accordance with the direction of the intended purpose. There are 3 (three) aspects that become the target of judge' behavior control, as follows; 1) the institutional aspect; 2) the substance or reference aspect that used for control/supervision, and 3) the method or work mechanism aspect. The presence of case with wrong site to be executed reflects poor control/supervision. Therefore, the Chief Justice of the Jakarta High Court is deemed inadequate in performing the supervision function of the execution of the court decision. There has been maladministration in the verdict.

Supervision that conducted internally by the Supreme Court and the Chief of Judiciary at each level did not result in significant changes in the reduction of the level of judicial corruption in Indonesia because internal supervision is ineffective and is influenced by a sense of solidarity to defend colleagues (*l'esprit de corps*). Weak internal supervision is caused by several factors, among others, as follows: a) inadequate quality and integrity of supervisors; b) non-transparent process of disciplinary inspection; c) there is no easy access for the disadvantaged community to submit complaints, monitor the process and the outcome (lack of access); d) spirit to assist colleagues (*esprit de corps*) which resulted in the impeachment of punishment unbalanced by deeds.

As result of interview with Jarihad, Chief Executive Officer of Palopo District Court, that the supervision made by the Chief Executive Officer of the District Court against an execution to be executed is that every request for execution must first be investigated by the Chief Executive Officer of the District Court whether executable or non-executable. If non-executable, the request is rejected, if executable, then the request for execution can be granted.

In the most urgent circumstances, the chief of the District Court is absent; the vice-chief of the district court can order to postpone the execution. If the execution is not conducive and endangers the life of the executioner in the field, after being directed by the Chief of the District Court as the supervisor, the execution must be postponed. The Supreme Court as an institution of judicial power which exercises supreme supervision over the course of the judiciary in all jurisdictions with the aim that the courts conducted by the courts shall be conducted carefully and fairly by referring to simple, quick and costly judicial principles, without prejudice to the freedom of judges in examining and decide the case.

The Supreme Court also supervising the work of the courts and the conduct of judges and the conduct of court

officials in performing their duties relating to the exercise of the main duties of the judicial authority, namely in the matter of receiving, examining, hearing and completing any matter brought to him/her, and requesting information matters pertaining to technical judicial matters as well as providing warning, reprimand and guidance as required without prejudice to judicial freedom. Supervision is also conducted on legal counsel and notary as long as it concerns the judiciary.

One other supervision of the community is the examination of the verdict. Examination may be made to criminal, civil or commercial cases. Beyond the scope, it is still possible to be examination, a case for being able to be casualized must at least meet 3 (three) criteria, as follows: a) it is considered highly controversial both in terms of the application of procedural law and/or material law and is considered contrary to the sense of community justice; b) it have a high social impact. The case has received widespread attention from the community, has direct or indirect impacts to the public, such as cases of corruption and human rights, and c) the indication of judicial corruption or judicial mafia so that the law is not implemented properly.

As a public supervision, the committee of examination may be established by the community. During this time, public examination activities are usually conducted by community groups that have been organized and focus its activities on judicial supervision. However, it is possible that the general public will establishes an examination board for certain cases, including civil rulings that have permanent legal binding and requires execution.

5. Conclusions

The implementation of real execution as exercised by the district court for civil case decision has not reflected the value of justice, humanity and legal certainty. Internal supervision as conducted by the Chief of District Court, High Court and Supreme Court on the implementation of real execution has not been effective because continual delayed execution that does not provide legal certainty for the justice seeker. Given a case of land clearance is a complicated case to be resolved, and through the regulation of the Supreme Court needs to be regulated on the carefulness principles in the execution. The continual of real execution due to the resistance of one party through judicial review legal remedies. Therefore, the chief of justice should consider the basic reasons for the judicial review that must comply with one of the reasons prescribed by the law and the reasons for the proposed judicial review are supported by clear, complete facts or evidence. It makes it easy to judge whether proper or not to postpone execution for reasons of judicial review. It is expected that the decision of court related to land clearance that implicate to the execution, to prevent problems, the verdict should be based on legal justice, social justice and moral justice.

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