



The problematics of execution mechanisms in Indonesia's civil law system: A normative juridical inquiry

Fernando Satria Putra Kasda¹, Dr. Bambang Slamet Riyadi², Dr. Riza Zulfikar²

¹ Langlangbuana University, Bandung, West Java, Indonesia

² Lecturer, Faculty of Law, Langlangbuana University, Bandung, West Java, Indonesia

Abstract

The execution of court judgments constitutes the final and decisive stage in civil litigation, aimed at ensuring legal certainty and the effective realization of justice for the parties involved. However, in practice, the enforcement of civil judgments in Indonesia frequently encounters a wide array of obstacles, both juridical and non-juridical in nature. This study seeks to critically examine the underlying problems associated with the execution of judgments within the Indonesian civil law system and to propose normative solutions to address such challenges.

This research employs a normative juridical method, utilizing both statutory and conceptual approaches to analyze the existing legal framework and its practical implications. The findings reveal that the principal impediments to effective execution include resistance from judgment debtors, competing claims from third parties, ambiguity concerning the object of dispute, and the limited effectiveness of law enforcement authorities. Accordingly, this study underscores the urgent need for regulatory reform and the strengthening of execution mechanisms in order to enhance legal certainty, uphold the authority of judicial decisions, and ensure the realization of substantive justice.

Keywords: Civil execution, legal certainty, execution obstacles, normative juridical analysis

Introduction

Indonesia, as a state governed by the rule of law as enshrined in Article 1 paragraph (3) of the 1945 Constitution, is fundamentally obligated to uphold the supremacy of law and to ensure justice for all citizens. In principle, the rule of law necessitates the consistent application of legal norms, equality before the law, and the independence of the judiciary. However, in practice, law enforcement in Indonesia continues to be confronted with a range of systemic challenges, among which judicial disparity and undue interference of power remain particularly significant.

Judicial disparity refers to inconsistencies in court decisions rendered by judges in cases of a similar nature, which in turn generate legal uncertainty and undermine public confidence in the justice system. Such disparities not only reflect the absence of standardized interpretative frameworks but also raise concerns regarding the predictability and integrity of judicial reasoning.

On the other hand, the phenomenon of power intervention in law enforcement indicates the presence of political or authoritative influence over judicial processes that should inherently remain independent and impartial. This interference compromises the foundational principles of judicial independence and impartiality, thereby eroding the legitimacy of the legal system as a whole.

These phenomena serve as critical indicators that the legal politics (*politik hukum*) in Indonesia has not yet fully aligned with the core principles of a rule of law state. The persistence of such issues highlights structural and institutional deficiencies within the legal system that require comprehensive examination.

Accordingly, this study seeks to address the following research questions: (1) How do the phenomena of judicial disparity and power intervention manifest within the law enforcement system in Indonesia? (2) How can these

phenomena be analyzed through a normative juridical approach? (3) What solutions can be formulated within the framework of legal politics to address these challenges?

Literature Review

Within the Indonesian civil justice system, court decisions that have attained permanent legal force (*inkracht van gewijsde*) are, in principle, regarded as the final culmination of the judicial process through which disputing parties seek justice. Theoretically, such decisions represent the definitive resolution of legal disputes and embody the realization of legal certainty. However, in practice, these judgments are not always effectively implemented in real life, as their realization depends upon a subsequent stage—namely, execution—which frequently constitutes the most critical and problematic phase in the entire framework of civil law enforcement.

Execution in the context of civil law should not be perceived merely as an administrative or procedural act; rather, it represents a concrete manifestation of fundamental legal principles, including legal certainty (*rechtzekerheid*), justice (*gerechtigheid*), and legal expediency (*doelmatigheid*), which collectively form the core objectives of the legal system. Consequently, the failure to effectively execute court judgments essentially reflects a broader failure of the state in ensuring the functionality of law as a governing instrument of social order. In this regard, although normative legal instruments such as the *Herzien Inlandsch Reglement* (HIR) and the *Rechtsreglement voor de Buitengewesten* (RBg) formally regulate the procedures for execution, various structural and substantive obstacles persist, hindering the optimal enforcement of judicial decisions.

A recurring phenomenon in Indonesian judicial practice is the situation in which a party who has legally prevailed (*de jure*) fails to obtain the substantive benefits of that victory

(*de facto*), giving rise to the commonly cited expression “winning on paper.” This condition illustrates a significant gap between legal norms and their practical implementation. The issue extends beyond mere procedural technicalities and encompasses broader socio-economic and political factors that influence the effectiveness of execution. These include resistance from judgment debtors, the involvement of third parties asserting competing claims, manipulation or ambiguity of the disputed object, and the lack of coordination among law enforcement authorities.

Furthermore, the complexity of execution-related problems is exacerbated by the existence of legal loopholes that enable the losing party to delay or obstruct enforcement through various legal remedies. These may take the form of formal mechanisms, such as judicial review petitions, as well as informal strategies, including social intervention and mass pressure. Such conditions ultimately lead to prolonged legal uncertainty and a decline in public trust in judicial institutions. From the perspective of a rule of law state (*rechtstaat*), this situation is highly problematic, as one of the defining characteristics of the rule of law is the assurance that judicial decisions are not merely symbolic or normative declarations, but are enforceable and effective in practice.

Accordingly, the issue of execution within the Indonesian civil law system cannot be understood solely as a technical juridical matter; rather, it constitutes a multidimensional problem requiring a comprehensive approach that encompasses regulatory reform, institutional strengthening, and the development of a supportive legal culture within society. Therefore, this study is of particular importance as it seeks to conduct an in-depth examination of the various challenges surrounding the execution of civil judgments in Indonesia, while also providing a normative juridical analysis that may serve as a foundation for formulating comprehensive, effective, and sustainable solutions as part of an effort to establish a judicial system that not only upholds substantive justice but also ensures the realization of legal certainty.

Analytical Conclusion

Based on the analysis of various scholarly literature and prior research, it can be concluded that the problems associated with the execution of judgments within the Indonesian civil law system represent a manifestation of the imbalance between the ideal normative framework of the law and its practical implementation. Normatively, the Indonesian legal system has established mechanisms for execution that are relatively adequate; however, in practice, these mechanisms fail to operate effectively due to the presence of structural, substantive, and cultural obstacles.

From a structural perspective, the weaknesses primarily lie in the lack of coordination and synergy among law enforcement institutions, resulting in inadequate support for the execution process, particularly when confronted with resistance from judgment debtors or surrounding communities. From a substantive standpoint, there remain significant loopholes within the regulatory framework that enable delays or even the avoidance of execution, such as the repetitive use of legal remedies and the submission of third-party claims that are not always grounded in good faith.

Meanwhile, from a cultural perspective, the low level of legal awareness within society, coupled with a tendency to evade or resist court decisions, further undermines the

effectiveness of execution. This indicates that the problem cannot be resolved solely through a normative legal approach, but also requires a transformation in the legal culture of society.

Furthermore, the analysis reveals that the failure to effectively execute court judgments does not only affect the disputing parties, but also carries broader implications for the legal system as a whole, particularly in terms of declining public trust in judicial institutions. This, in turn, poses a serious threat to the legitimacy of law as an instrument for regulating social life.

Therefore, comprehensive and sustainable reform efforts are imperative. Such reforms should not be limited to improving regulatory frameworks, but must also encompass institutional strengthening, capacity building of law enforcement authorities, and the development of a more robust legal culture within society. Through these measures, the execution of court judgments can be transformed from a persistent weakness into an effective instrument for realizing justice and ensuring legal certainty within the Indonesian civil justice system.

Research Problems

1. What are the prevailing issues in the implementation of civil judgment enforcement in Indonesia?
2. How can these issues be analyzed through a normative juridical perspective?
3. What solutions can be proposed to enhance the effectiveness of enforcement mechanisms?

Research Objectives

- To analyze the obstacles in the enforcement of civil judgments
- To examine these issues through a normative juridical approach
- To propose solutions to the problems of civil execution

Research Method

This study employs a normative juridical method, which focuses on examining legal norms as embodied in statutory regulations, court decisions, and legal doctrines.

The approaches used in this research include:

- Statutory approach
- Conceptual approach
- Case approach

The legal materials utilized consist of:

- **Primary legal materials:** HIR, RBg, Indonesian Civil Code
- **Secondary legal materials:** books, journals, and scholarly articles
- **Tertiary legal materials:** legal dictionaries and encyclopedias

Results and Discussion

1. The Concept of Execution in Civil Law

Execution constitutes a coercive measure undertaken by the court to enforce a judgment that has obtained permanent legal force. According to Mertokusumo (2010), execution represents the realization of the obligation of the losing party to comply with the content of the judgment.

2. Problems of Execution in Indonesia

The enforcement of civil judgments in Indonesia represents a crucial stage, as it serves as the point at which judicial

decisions are realized in practice. However, in its implementation, execution frequently encounters complex and multifaceted challenges stemming from juridical, institutional, and social dimensions. These issues reflect a gap between legal norms in their ideal form and their practical application, resulting in suboptimal enforcement of civil law.

2.1 Juridical Obstacles

Juridical obstacles arise from the legal system itself, particularly in the form of regulatory and procedural constraints. One of the most dominant obstacles is the use of extraordinary legal remedies by the losing party to delay execution, such as the filing of a judicial review (Peninjauan Kembali/PK). Although, in principle, PK does not suspend execution, in practice it is often used as a justification to request postponement.

Additionally, third-party opposition (derden verzet) constitutes a significant barrier. Third parties claiming an interest in the disputed object may file new lawsuits, thereby delaying execution. In many cases, this mechanism is misused strategically to obstruct enforcement.

Another issue concerns non-executable judgments, namely decisions that cannot be enforced due to unclear, incomplete, or non-operational rulings. This indicates that the quality of judicial decisions significantly affects the success of execution.

2.2 Non-Juridical Obstacles

Beyond legal factors, execution also faces non-juridical challenges that are often more difficult to resolve. One major issue is physical resistance from the executed party or interested groups, which may escalate into broader social conflicts.

Furthermore, intervention by economically or politically powerful actors may influence the execution process, demonstrating that enforcement is not purely a legal matter but is also shaped by power dynamics.

High execution costs also pose a substantial burden on the winning party, including administrative, security, and operational expenses, which may hinder access to justice.

2.3 Uncertainty and Disputes over Execution Objects

A recurring issue in practice is the lack of clarity regarding the object of execution, particularly in land or property disputes. This may result from:

- Inaccurate ownership data
- Overlapping land certificates
- Discrepancies between court rulings and factual conditions

Such uncertainties often generate new disputes at the execution stage, prolonging legal resolution and undermining legal certainty.

2.4 Resistance and Non-Compliance of the Executed Party

A key issue in execution is the low level of compliance by losing parties. Frequently, they refuse to voluntarily comply, forcing courts to undertake coercive measures. Forms of resistance include:

- Administrative refusal
- Forced eviction resistance
- Mass mobilization to obstruct execution

This reflects a broader issue of low legal awareness within society.

2.5 Weak Institutional Coordination

Execution involves multiple institutions, including courts, police, and local governments. However, coordination among these bodies is often ineffective, resulting in:

- Delays in execution
- Insufficient security support
- Data inconsistencies

2.6 Delay and Abuse of Procedures

Execution delays are common, often due to procedural abuse by losing parties, such as:

- Filing new lawsuits over the same object
- Submitting unfounded postponement requests
- Exploiting legal loopholes

2.7 Limitations of Personnel and Facilities

The limited number and capacity of enforcement officers, particularly bailiffs, as well as inadequate infrastructure, hinder effective execution.

Closing Analysis of Subsection

The obstacles to execution in Indonesia are complex and interrelated, encompassing juridical, non-juridical, and institutional weaknesses. These challenges highlight a disparity between legal norms and social realities, necessitating comprehensive reform.

3. Normative Juridical Analysis

The issues in execution demonstrate that Indonesian civil procedural law has not fully upheld the principles of:

- Legal certainty
- Justice
- Utility

Moreover, the absence of strict sanctions against parties obstructing execution remains a major weakness.

4. Solutions and Reforms

4.1 Reform of Civil Procedural Law

There is a need to modernize outdated regulations such as HIR and RBg by:

- Limiting legal remedies that delay execution
- Establishing clear execution timeframes
- Clarifying execution objects

4.2 Implementation of Contempt of Court

Introducing contempt of court mechanisms can enforce judicial authority through:

- Criminal or administrative sanctions
- Fines for non-compliance
- Legal action against unlawful resistance

4.3 Strengthening Institutions and Law Enforcement

Efforts should include:

- Enhancing bailiff professionalism
- Standardizing execution procedures
- Improving inter-agency coordination

4.4 Digitalization of the Judicial System

Execution processes should be modernized through:

- Electronic execution systems
- Real-time monitoring
- Integrated institutional databases

4.5 Improvement of Judicial Decisions

Judgments must be:

- Clear and enforceable
- Unambiguous
- Specific regarding execution objects

4.6 Enhancing Legal Awareness

This can be achieved through:

- Public legal education
- Promoting compliance with court decisions
- Strengthening rule-of-law values

4.7 Alternative Dispute Resolution

Encouraging mediation and negotiation before execution can reduce conflict and court burden.

4.8 Reform of Execution Costs and Access

Measures include:

- Standardizing costs
- Ensuring transparency
- Providing legal aid for disadvantaged groups

Closing Analysis of Subsection

Overall, resolving execution issues requires a systemic and comprehensive approach, encompassing regulatory reform, institutional strengthening, technological modernization, and the development of legal culture. Without such reforms, execution will remain a critical weakness in Indonesia's civil justice-system.

Conclusion

The problems surrounding the enforcement of civil judgments in Indonesia constitute a multidimensional issue, encompassing legal, social, and institutional aspects. The primary obstacles include resistance from the executed party, claims by third parties, ambiguity regarding the object of execution, and weak law enforcement mechanisms.

Despite being normatively regulated within the legal framework, the implementation of execution remains ineffective, thereby hindering the realization of legal certainty and justice.

Therefore, a comprehensive and systemic reform of Indonesia's civil law system is imperative in order to enhance the effectiveness of execution and to ensure the proper functioning of the rule of law.

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