

THE BALANCING AMIDST THE PRINCIPLES OF JUSTICE, LEGAL CERTAINTY, AND EXPEDIENCY IN THE AUCTION EXECUTION FOR THE SETTLEMENT OF CIVIL CASES

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ABSTRACT

The ultimate goal of the law enforcement process is that the law guarantees the implementation of equal justice and protection for human dignity, order, peace, and legal certainty under the provisions of the law. Three principles must receive professional attention, although it is challenging to do in practice. Therefore, the Judge must make every effort so that every decision rendered contains the three principles that are the basis and purpose of the law. The research method used in this research is analytical descriptive data obtained from secondary legal sources. The data obtained from field studies and document studies are then analyzed in a qualitative juridical manner. After the data has been collected, it is poured into a logical and systematic description without using mathematical formulas. The purpose of a court is to obtain a judgment and decision-making that knows the actuality of the case. As well as the legal rules governing it that will be applied, both legal authorities wrote in legislation and unwritten law, and to analyze the application of the three principles in the judgment and decision making. The results prove that judgment and decision-making are unrest and unsortable in life without these three principles, especially for justice seekers. Furthermore, the research results show that in applying legal certainty, whatever happens, the rules are so and must be obeyed or implemented. The application of justice is fair if it can provide balanced treatment between rights and obligations. While utilization means that the law exists for humans, then implementing the law or law enforcement must benefit society.

Keywords: Judgment, Decision making, Justice, Legal Certainty, Expediency

INTRODUCTION

In some literature, legal experts provide a definition of a judgment that is a decision or commonly referred to as a court decision. (Simon, D., & Scurich, N, 2013). There are several different definitions of a judgement from several of these experts providing a definition of a judgement. (Beiner, R. 2013). For Instance, Judgement as a statement by a judge, as an official authorized by that authority, pronounced in court and aimed at ending or resolving a case or a dispute between the parties. The definition of a Judge's Decision according to Andi Hamzah is the result or conclusion of a case that has been carefully considered which can take the form of a written or oral decision. (Ahmad, K. 2021).

The judge's decision can be considered both a "crown" for the judge and a means for the defendant to obtain clarity regarding his legal status. It also serves as a reflection of the judge's ethics, mentality, and morality and of the values of justice, truth, and human rights. From some of the expert opinions above, a conclusion can be drawn regarding the judge's decision, namely what is meant by a judge's decision is a final conclusion made in written form by a judge as a state official authorized to do so with the aim of resolving or

ending a dispute between the parties in order to create justice and legal certainty and pronounced in front of a trial that is open to the public after going through the applicable processes and procedures according to statutory provisions.

Judges' decisions in terms of practical and theoretical perspectives are pronouncements made as a result of their position in court proceedings after following procedures for procedural law, typically in written form, with the goal of resolving or concluding the case (Bambang Sugeng and Sujayadi, 2012, p. 85). Each written decision must be signed by the judge, the members who participated in the examination, and the substitute registrar who attended the hearing.

Legal action against the law This may be the result of a violation of a legal regulation if the plaintiff or debtor, as a person with an ownership interest in the object of the auction, feels injured by the auction. In the example case cited above, the debtor's attempts to postpone the auction prior to the auction demonstrate that implementing the mortgage execution auction is difficult despite the existence of laws governing the auction. (Hidayana, M. I., Ismail, I., & Muazzin, M. 2021). This demonstrates that efforts to prolong the implementation of the mortgage execution auction have been ongoing for the duration of a lawsuit to delay the auction execution of mortgage, which is typically initiated by dishonest debtors. In order to assure the rights of justice seekers, the law provides a path with rights for all justice seekers, so that the parties involved in the auction have legal certainty.

The problem arise when legal certainty violations of a person's rights as defined by civil law. The decision which cause damage to the parties involved, give rise to civil disputes. Those who feel disadvantaged must therefore present a case to a magistrate in order to obtain an appropriate settlement. The judge must determine the authenticity of the parties' statements and demands. (Sugiyono, H., & Marbun, R. (2019). Civil law exists to regulate the legal relationship between one person and another in social life because the law regulates the behavior and actions of individuals in social and state life. The crisis in the decision-making of district court judges is presently one of the most important topics. The crisis is an anomalous condition because various institutions that are designed to manage societal processes are unable to perform their duties effectively.

LITERATURE REVIEW

Legal Justice

Sidharta said that One of the objectives of the creation of law is justice. (Sidharta, 2006) Justice is a shared sentiment shared between humans. John Rawls (2006) argues about justice in relation to the principle of freedom, namely, equality or equality for every human being (principle of utmost equal liberty). In this regard, John Rawls argues that all individuals have the same rights as their respective freedoms. This statement leads to the conclusion that the relationship between law and justice is inseparable, and that justice is not limited to discussing something formally but also as an outline or comprehensive expression of society's principles. Satjipto Rahardjo (2006).

Legal certainty is the probability that a particular situation exists, one in which there are explicit, consistent, accessible, issued, and acknowledged legal rules. (Soeroso, 2011) On the other hand, legal certainty is understood as norms whose general meaning guides individuals' behavior in society, both in their relationships with other individuals and in their interactions with society. This rule will also establish legal certainty. This clarity and decisiveness indicate that something is certain and cannot be interpreted in multiple ways. (Peter Mahmud Marzuki, 2008) Article 28D, paragraph 1, of the Constitution of 1945, which states that every citizen has the right to legal certainty and equal treatment before the law, is the literal source of legal certainty. In practice, however, there are frequently overlapping

legal rules that create uncertainty regarding a legal standard.

Execution of the object of the fiduciary guarantee might well be carried out by the financing company (leasing) if there is an agreement on the default clause (breach of promise) and the debtor voluntarily submits the object of the fiduciary guarantee; otherwise, only parate execution may be carried out. A breach of contract agreement, such as when the debtor fails to pay the installments by a certain date and refuses to voluntarily surrender the object of the fiduciary guarantee, can be enforced by the court.

Article 15 paragraph 3 stipulates that if the debtor breaches the contract, the fiduciary grantor may transfer the object of the fiduciary guarantee. The Constitutional Court rules that breach of contract is not determined unilaterally by the creditor, but rather in accordance with an agreement with the debtor. If there is a breach of contract agreement, the fiduciary recipient (creditor) cannot execute the fiduciary guarantee, but must submit a request for execution to the District Court. The decision of the Constitutional Court seeks to provide legal certainty and a sense of justice between the lessee and the debtor, as well as to prevent arbitrary actions in the creditor's execution.

The decision of the Constitutional Court stipulates that not all executions of objects of fiduciary security must be conducted through the courts, but that parate executions may also be conducted. Alternatively, if there are no agreement criteria for breach of contract in the fiduciary agreement clause and the debtor objects to submitting the fiduciary guarantee object voluntarily, then all legal mechanisms and procedures in the execution of the fiduciary guarantee must be carried out and applied in the same manner as a legally binding court decision.

If it pertains to the theory of legal protection, according to M. Isnaeni's opinion, the issue is fundamentally "There are two types of legal protection in terms of the source: "external" legal protection and "internal" legal protection (Isnaeni, 2016). The essence of internal legal protection is that it is created by the parties themselves at the time of contract formation, when both parties want their interests to be accommodated in accordance with the terms of the contract. Similarly, attempts are made to prevent all types of risks through filing through clauses that are bundled on the basis of agreement, so that the parties will receive balanced legal protection based on their agreement. The parties to such internal legal protection can only exist if their legal standing is relatively equal, in the sense that their bargaining power is relatively balanced, so that, in accordance with the principle of contract freedom, each partner in the agreement is free to express his will in accordance with his interests. "This pattern is used as a starting point when the parties compose the clauses of the agreement they are negotiating so that the legal protection of each party can be easily realized on their own initiative (Maroni, M. (2019

METHODOLOGY

Normative legal study was used to write this research. Normative legal research is the process of locating the law, legal ideas, and legal principles in order to address the legal questions raised so that fresh justifications, theories, or concepts can be discovered and used as descriptions in problem-solving.

DISCUSSION

Colonialism had an impact on the legal system in the colonies. The Dutch had colonized Indonesia and were arguably the most successful colonizers, in the sense that the occupation was still influencing the legal system in use today. Generally speaking, the public justice system does refer to material and formal law. Nonetheless, if the Indonesian legal system is categorized as a particular system, researchers have different opinions. Indonesia is neither

a member of the Common Law nor the Civil Law systems. In Indonesia, the legal system is codified, but the codification does not completely regulate community relations, as customary law and Islamic law continue to apply from before the formation of the Indonesian state.

Conversely, a declaratory or constitutive judgment can stand alone without a condemnatory judgment. However, to resolve a dispute, a decision that only contains declaratory or constitutive rulings is not considered to be of great benefit or ineffective, because such a decision cannot be enforced through execution if the convicted party does not want to carry it out voluntarily, so that the decision imposed is not complete in resolving the dispute.

The realization of order and balance in social life is the main goal of law enforcement, so that every citizen's interests must be and remain protected. Furthermore, there are three elements in law enforcement, including: legal certainty, legal benefits and justice. These three elements in practice are implemented in court decisions, one of which is a court decision on the object of dispute. The court decision is attached to the power of execution which is a manifestation of permanent legal force so that any execution of a court decision cannot be delayed.

Basically, execution is not carried out if the losing party voluntarily accepts and implements the court's decision. If not, then execution can be carried out in the form of forcible execution of the decision. However, execution basically has the same meaning as executing a decision (ten uitvoer legging van vonnissen), which in its implementation can be carried out "by force" with the help of public force, if the losing party does not heed the court's decision on the object of the dispute.

Beyond that, considering that the execution must pay attention to human values and justice, the bailiff should also have certain competencies needed to respond to special conditions in the field with appropriate actions. One of the important competencies possessed by bailiffs is the ability to negotiate. With this competency, the bailiff is expected to make efforts to approach the respondent in advance so that they are willing to carry out the court's decision voluntarily so that the bailiff does not need to carry out forced execution. Thus, it is expected that the potential for resistance can be muted, even avoided, so that the execution can be carried out smoothly and orderly. If the material on negotiation has not been taught in the bailiff training material, then the Supreme Court needs to include negotiation skills material in the bailiff training.

In simple terms, it can be said that the procedure for the implementation of civil execution is carried out based on the principles of civil procedural law, especially at the stage of decision/execution, applicable laws and regulations, and involves related institutions. The institutions referred to are: District Court, KPKNL, and National Police. However, to be able to understand the real problems that often occur in practice related to the implementation of civil executions and their legal consequences, it is necessary to understand the procedure for the implementation of executions theoretically, namely by being guided by the applicable laws and regulations and the principles of civil procedural law, especially those related to execution issues.

In principle, the stages of execution of court decisions in civil cases both real execution and payment of money are the same, except for the stage of execution auction which is only found in the execution of payment of money.

The next stage of the execution seizure in the process of executing the payment of a sum of money is the sale in public or auction, this is because the implementation of the verdict in the form of an obligation to pay a sum of money by the executed party to the applicant for

execution, as the main purpose of civil execution, is very dependent on the success or failure of the sale of the object of execution seizure through the auction process which provides a sense of justice for all parties involved in the process of implementing the auction, especially the auction buyer and seller.

Equal treatment in the application of the law will produce legal certainty. Because judges have applied the same legal standards to cases that have been ruled or tried by previous judges or to cases that are the same or similar to cases that have been ruled or tried by previous judges, justice seekers will be able to predict the outcomes of cases if legal certainty is realized. With a consistent decision, justice and legal certainty can be achieved.

Due to the realization of consistency in the application of the law, legal certainty will facilitate the process of law enforcement, making it easier for officials to carry out their responsibilities. Consistent application of the law can also foster jurisprudence as a source of law and legal development, because the law is not always exhaustive and regulates everything completely. When the law does not regulate a situation, it is the judge's responsibility to create new laws, both formal and material.

The purpose of law is to ensure legal certainty in society. E. Utrecht also stated the same thing that the purpose of law is to guarantee legal interests in human association. Legal certainty in society is very important, because legal certainty will create order in society. However, if the judge focuses too much on legal certainty by strictly adhering to the rule of law, it will result in injustice for the community and show the impression of a rigid law.

If the regulation is strictly implemented, then the applicable law often feels cruel to the community, because it applies *lex dura, sed tamen scripta*, the law is harsh, but that's how it sounds. This principle of legal certainty is embraced by the Normative / Juridical dogmatic school of thought.

Justice comes from the word fair, which means objectively acceptable. The goal of law in the form of justice is something abstract. Justice can take the form of a permanent and continuous willingness to give everyone what is rightfully theirs, and there are also those who see justice as a justification for the implementation of the law which is contrasted with arbitrariness.

This theory of justice is embraced by the ethical school which considers justice as a moral idea or theoretical moral teaching. Ethical teaching states that in principle the purpose of law is solely to achieve justice. According to this theory, the content of the law must solely be determined by our ethical awareness of what is fair and what is unfair to society.

There are different perspectives on the meaning of justice. Plato divides the concept of justice into moral justice and procedural justice. Moral justice is an act that can be said. Meanwhile, procedural justice is when a person has been able to carry out fair actions based on the expected procedures.

While the concept of expediency The concept of the principle of expediency in a judge's decision is when the judge does not only apply the law textually or pursue legal certainty or justice alone, but must also lead to benefits for the interests of the parties and the interests of society in general. Do not let it be because the law is implemented or enforced, it will actually cause unrest for the community itself.

CONCLUSION

A good judgement decision is a decision that should fulfill three elements or aspects at once in a balanced manner, namely providing legal certainty, a sense of justice, benefits for the parties and society. These three elements are important principles that become the benchmark for judges in achieving legal objectives as outlined in a decision.

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