An Analysis On Regulation Of Land Execution Under Immediately Executable Judgment (Uitvoerbaar Bij Voorraad) Based On Supreme Court Circular No. 3 Of 2000 And No. 4 Of 2001 On Immediately Executable Judgment: A Perspective From Legal Equity And Certainty

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ABSTRACT: Immediately executable judgment (Uitvoerbaar Bij Voorraad) often result in problems, especially when its object is land. The problems arise when the judgment has been already executed in the first instance yet it is annulled by the higher instance (appeal), so that the recovery process becomes an issue. This condition indicates a need for an in-depth study on the regulation of immediately executable judgment. The problems to be studied are: (1) The regulation of land execution towards immediately executable judgment (Uitvoerbaar Bij Voorraad) in Supreme Court Circular (SEMA) No. 3 of 2000 and SEMA No. 4 of 2001 on Immediately Executable Judgment, (2) Has land execution towards immediately executable judgment (Uitvoerbaar Bij Voorraad) in SEMA No. 3 of 2000 and SEMA No. 4 Of 2001 on Immediately Executable Judgment reflected legal equity and equity for the concerned party? The analysis result found that the provisions in SEMA no 3 of 2000 and SEMA no. 4 of 2001 have not been able to cover problems related to the execution of immediately executable judgment, particularly those related to land execution. Therefore, it is necessary to design a legal product that specifically regulates the implementation of execution, particularly land execution under immediately executable judgment. This is important to ensure the legal certainty and equity for the concerned parties during the land execution under immediately executable judgment.

Keywords: Immediately Executable Judgment, Land Dispute, Execution.

A. INTRODUCTION

Inability to realize legal equity and certainty simultaneously leads to people distrust on law enforcers, declining the authority of judicature institutions. In its practice, conflict occurs when legal certainty is associated with equity. This conflict occurs because sometimes, legal certainty ignores the principle of equity, and vice versa. When such a conflict emerges, equity should be prioritized. It should be prioritized since it comes from the judge’s conscience, while legal certainty is born from a concrete matter. Court decree is not enough to completely settle a case, unless it has been executed. In this case, execution cannot be carried out due to various obstacles. Almost every execution faces new problems that immediately arise. With regard to this matter, Muhammad Yamin states:

“Common people say that court decree is merely on paper, it may be hundreds or thousands in number. Religious court decree cannot be executed due to various reasons.”

In agreement with Muhammad Yamin, Purwoto S Gandha Subrata states:

“In practice, it turns out that the execution of court decree often makes the Head of District Court, as the official ordering the execution, faces confusing problems.”

If the implementation of the decree of civil case is delayed, or cannot be implemented, it could harm the justice-seeker, as a legal maxim says “justice delayed is justice denied.” This delay, of course, does not comply with the principle of justice stated in Act on Judicature Authority stating that justice should be carried out simple, quick, and cheap. Sudikno Mertokusumo explains that there are three steps of execution in civil law, preliminary stage, stipulation stage, and implementation stage. Preliminary stage refers to the preparation towards the next step, i.e. Stipulation and implementation stage. In stipulation stage, the investigation is carried out until a decision is made. In implementation stage, the decree is taken into action. A decree is executable when it attains permanent legal force (in kracht van gewijde). With a court decree attaining permanent legal force on a civil case, the purpose of the justice seekers has been obtained. Through that court decree, the right and responsibility of each concerning parties are known. However, it does not mean that the final goal of the parties finish, particularly for the winning party since they do not want their winning is not only on paper but also on the execution of the decree. It is undeniable that obtaining a decree with permanent legal force may take times, even, it can take years. However, there is a stipulation that...
deviates, it is in article 180 paragraph 1 of HIR/ article 191 paragraph 1 of RBg. It is the stipulation on a decision which its implementation can be carried out beforehand although there is an appeal. In other words, it can be implemented although it has not attained permanent legal force, this is known as uitvoerbaar bij voorraad. Uitvoerbaar bij voorraad (immediately executable judgment) is the court decree that can be implemented beforehand although an appeal for the ruling is filed. The legal basis of immediately executable judgment is stipulated in article 180 paragraph (1) of HIR (for Java and Madura) or article 191 paragraph (1) of RBg (for outside Java and Madura) stating that immediately executable judgment refers to a decision that can be implemented although it has not attained permanent legal force. The term “immediately executable judgment” by the Supreme Court is defined as a statement stating that the Judge is authorized to make a decision containing an instruction “to order that the ruling is implemented beforehand although it has not attained permanent legal force, or even if the ruling is appealed.” Considering the legal basis of immediately executable ruling, i.e article 180 paragraph 1 of HIR / article 191 paragraph 1 of RBg. Article 180 paragraph 1 of HIR reads:

“Although people deny the district court judge’s ruling, that district court can instruct the execution of the judge’s ruling beforehand. If there is a lawful letter, a letter that is acceptable according to law, it can be accepted as an evidence, or if there is a prior decision with a decree that has been permanent. So if the previous lawsuit is granted, or in dispute of right of ownership.”

Article 180 paragraph 1 HIR/ article 191 paragraph 1 RBg provides the judge an authority to make an immediately executable judgment. However in practice, the implementation of this authority is unclear and often deviates from the law. In principle, immediately executable judgment is a risky step. This is risky since a court ruling can only be executed when it obtains permanent legal force, yet article 180 paragraph (1) HIR and 191 paragraph (1) of RBg make a small exception by allowing them to make decision and instructing it to be implemented beforehand although the losing party files an appeal. When we see the practice in courts, execution of immediately executable judgment creates a dilemma, the district court issue an immediately executable judgment, yet they are less willing and not bold enough to execute the decree. Accordingly, the Supreme Court, as an authorized body supervising the implementation of regulation, gives considerable attention to immediately executable judgment (uitvoerbaar bij voorraad) which often leads to problems. The Supreme Court issues the Supreme Court Circular (SEMA) as an attempt to prevent and solve the issues. The first SEMA is SEMA no. 13 of 1964. Then SEMA no. 5 of 1969 that provide further regulation is issued. After that, SEMA no. 3 of 1971 was issued, revoking the previous two SEMAs. It is further regulated in SEMA no. 6 of 1975 and SEMA no. 3 of 1978. Lastly, SEMA used as the guideline for the Judges in making immediately executable judgment are SEMA no. 3 Of 2000 and SEMA no. 4 of 2001, while other SEMAs are revoked. The Supreme Court issues instruction and some SEMAs for the Judge of District court not easily to make an immediately executable judgment. In order to grant the request for immediately executable judgment, the Judges must pay attention to some SEMAs, besides, requirements stated in article 180 paragraph 1 of HIR/ article 191 paragraph 1 RBg. In its practice, Immediately executable judgment (Uitvoerbaar Bij Voorraad) often result in problems. Especially when its object is land. The problems arise when the judgment has been already executed in the first instance yet it is annulled by the higher instance (appeal), so that the recovery process becomes an issue. The disputing object is not necessarily held by the plaintiff/ the winning parties. The problem arises when the object has been sold and transferred to other parties since it will be difficult to recover the disputed object. Therefore, based on the problems explained earlier regarding the problems of implementation of immediately executable judgment, especially for the land that becomes the object of that ruling. The winning party has the right to hold the land even if the ruling has not attained permanent legal force. This is considered harmful for the losing party. On the other hand, immediately executable judgment gives advantages for the winning party since they can immediately request for execution to the court. Besides they also hold right to transfer the land right to other parties. The problems arising in the implementation of immediately executable judgment result in legal uncertainty and inequity for the concerning parties, which is also related to the legal protection for them. Accordingly, a study on regulation regulating the implementation of immediately executable judgment is necessary to gain deeper understanding of legal certainty and equity provided within the mechanism and the implementation of immediately executable judgment. It is necessary because to date, the mechanism and the implementation of immediately executable judgment often face problems that lead to failure in achieving legal certainty and equity. Thus, based on the problems regarding immediately executable judgment, in this paper, the author focuses on studying the regulation regulating immediately executable judgment, namely SEMA no. 3 of 2000 and SEMA No. 4 of 2001. Besides, the author also studies whether or not SEMA has satisfied the legal certainty and legal equity for the parties. This problem is studied in a scientific paper entitled “AN ANALYSIS ON REGULATION OF LAND EXECUTION UNDER IMMEDIATELY EXECUTABLE JUDGMENT (UITVOERBAAR BIJ VOORRAAD) BASED ON SUPREME COURT CIRCULAR NO. 3 OF 2000 AND NO. 4 OF 2001 ON IMMEDIATELY EXECUTABLE JUDGMENT: A PERSPECTIVE FROM LEGAL EQUITY AND CERTAINTY.”

B. PROBLEMS

The followings are the problem statements of the study:

1. How is the regulation of land execution under immediately executable judgment (Uitvoerbaar Bij Voorraad) in Supreme Court Circular (SEMA) No. 3 of 2000 and SEMA No. 4 of 2001 on immediately executable judgment?

2. Has land execution under immediately executable judgment (Uitvoerbaar Bij Voorraad) in SEMA No. 3 of 2000 and SEMA No. 4 Of 2001 on Immediately Executable Judgment reflected legal equity and certainty for the concerned party?
C. RESEARCH METHODOLOGY
This legal writing was categorized into normative legal study employing statute approach and conceptual approach.

D. DISCUSSION
1. The regulation of land execution under immediately executable judgment (Uitvoerbaar Bij Voorraad) in Supreme Court Circular (SEMA) No. 3 of 2000 and SEMA No. 4 of 2001 on Immediately Executable Judgment

Land execution in the scope of civil case execution, according to Yahya Harahap, is a forced action in carrying out the court decree that has attained permanent legal force. Execution is a legal option when the losing party is not willing to adhere to the decree. In civil case, including land dispute, execution of a decree is the last option to settle a dispute so that the winning party can obtain their right as stipulated by the court decree. Land execution is an executable decree (condemnatio), its nature is punishing. In other words, the losing party is obliged to do something. The court is responsible for performing execution under the stipulation in article 54 paragraph 2 of Law no 48 of 2009 on Judiciary Authority stating that the implementation of court decree in a civil case is carried out by the clerk and the bailiff, lead by the Head of the Court. Article 54 paragraph 3 of Law no 48 of 2009 on Judiciary Authority asserts that the court decree is executed by paying attention to the value of humanity and equity. Stipulation on execution is also regulated in article 195-208 HIR and article 224-225 HIR (Article 206-240 RBg and Article 258 RBg). This land execution is carried out by the bailiff, using the state’s power instrument, if necessary. Execution should be performed completely. A court decree that punishes one of the parties to give up on their land does not necessarily mean that the problem is solved, particularly for the winning party. Sometimes, problems arise when the decree has attained permanent legal force. With regard to this problem, article 180 paragraph (1) HIR / Article 191 paragraph (1) RBg regulates that the court decree can be implemented although there is an appeal. In other words, such a decree can be implemented although it has not attained a permanent legal force. The authority to make an immediately executable decree is on the Judge’s hand. However, in practice, the implementation of his authority is mazy, leading to deviation. Article 79 of Act no. 14 of 1985 on Supreme Court explains that “The Supreme Court may set forth further matters required for the smooth administration of justice if there are any matters not yet sufficiently provided herein.” Article 79 of Act on Supreme Court provides them a rule-making power that is limited and complementary in nature regarding the settlement of a matter that have not been regulated. In this case, the Supreme Court holds a right to issue Supreme Court Circular (Surat Edaran Mahkamah Agung/ SEMA) to complement, or to provide a guideline about a case. In the implementation of immediately executable judgment, the Supreme Court issues a number of SEMAs. To date, SEMAs that are used as a reference to make an immediately executable judgment are SEMA no 3 of 2000 and SEMA no. 4 of 2001. These two SEMAs regulate the provision on the implementation of immediately executable judgment. However, the study conducted by the author found that these SEMAs have not been able to cover all problems arising during the implementation of immediately executable judgment, especially those regarding land execution which becomes the focus of the present study.

a. SEMA No. 3 of 2000 on Immediately Executable Judgment

By the issuance of SEMA no. 3 of 2000, the Supreme Court revokes all previous SEMAs related to the immediately executable judgment (uit voerbaar bij voorraad). By revoking those SEMAs, regulation concerning immediately executable judgment enters phase after it is not discussed for twenty-two years by the Supreme Court. In SEMA no. 3 of 2000, there are a number of important points, they are points in number 4, 5, 6 and 7. The details are as follows:

Number 4
The Supreme Court provide guideline to the Head of Court Decree, the Head of Religious Court, the Judges of District Court and Religious Court to not making Immediately Executable Judgment unless the following situation occurs

a. The claim is made based on an authentic letter or hand-written letter(handschrift), which its content and signature validity is not questioned that possess an evidentiary power.

b. Lawsuit on Debt-Receiveable where its amount is clear and undeniable.

c. Lawsuit on loan of land, house, warehouse, and others, where its relation is ended/ expired, or when the lessee is proven to neglect its responsibility as a lessee with a good will.

d. The lawsuit on the marital property division when the lawsuit attains permanent legal force.

e. The provisional lawsuit is granted by considering that to make the law firms and clear, and complies with article 32 Rv;

f. Lawsuit based on a ruling that has attained permanent legal force (inkracht van gewijde) and holds association with the essence of lawsuit filed;

g. Dispute regarding bezitsrecht.

Number 5
After the immediately executable judgment is ruled by the Judge of District Court of Religious court, the copy of the ruling is delivered to the High Court and Religious High Court no more than thirty days from the ruling is spoken.

Number 6
If the plaintiff files a request to the Head of District Court and Head of Religious Court to implement the Immediately Executable Judgment and Provisional ruling, the request, along with the case documents are delivered to the High Court and Religious High Court. They should be complemented with opinion from the Head of the District Court and the Head of Religious Court.

Number 7
There should be a guarantee of which value is equal to the value of the executed object, preventing loses to other parties if in the future, a ruling that annul the ruling in the first instance is issued. Based on the description above, the points regulated in SEMA no. 3 of 2000 on Immediately Executable Judgment are limited to the general stipulation of the implementation of immediately executable judgment. Therefore, in author’s opinion, SEMA no. 3 of 2000 has not
been able to cover the problems regarding the implementation of execution of immediately executable judgment, especially on land execution. This inability occurs because SEMA no. 3 of 2000 is limited to regulate the general matters such as requirements to make an immediately executable judgment, and the guarantee on the execution object. Accordingly, the author concludes that SEMA no. 3 of 2000 does not contain a specific regulation on land execution under immediately executable judgment, which can be used to cover problems and hindrances on the implementation of land execution.

b. SEMA No. 4 of 2001 on Immediately Executable Judgment

SEMA no. 4 of 2001 is born as an attempt made by the Supreme Court to answer the demands and complaints regarding the execution of immediately executable judgment, especially regarding land object. The Supreme Court, through this SEMA, asserts that the Judge to make an immediately executable judgment should be prudent and pay attention, and adhere to SEMA no. 3 of 2000. Besides, the Supreme Court, through SEMA no. 4 of 2001 affirms the responsibility of guarantee for the plaintiff who wants to have his decree is immediately executed. Following the explanation above, points stated in SEMA no. 4 of 2001 only acts as an affirmation for the points regulated in SEMA no. 3 of 2000. Accordingly, the author argues that there is no new regulation on the implementation of execution of immediately executable decree regulated in SEMA no. 4 of 2001. The author argues that SEMA no. 4 of 2001 has not been able to cover the problems on the execution of immediately executable judgment, particularly on land execution. This argument is based on the absence of specific regulation regarding land execution under immediately executable judgment in SEMA no. 4 of 2001. This SEMA is merely an affirmation for the previous SEMA. Based on the study on these two regulations, it is found that the objects of norms of these SEMAs are Judges, Heads of Court, clerk, and court officers. In this case, the objects of the norms are judge, the head of the court, clerk, and court officers. Therefore, the author assumes that these SEMAs are regulatory policy, this assumption is based on the characteristic of regulation proposed by victor imanuel. Based on the characteristics proposed by Victor Emanuel, SEMA, as a regulatory policy does not directly legally binding, yet it possesses only legal relevance. These two SEMAs emerge as the legal relevance for HIR and RBg, and as the Supreme Court response due to legal gap on the implementation of immediately executable judgment. The author concludes that SEMA no. 3 of 2000 and SEMA no. 4 of 2001 act only as a guideline for the Supreme Court and the Judiciary Institution to implement immediately executable judgment. Accordingly, the regulatory legislation regulating the implementation of immediately executable judgment is HIR and RBg. Secondly, based on the study that had been conducted, the author concludes that the provision contained in these two SEMAs are general provision in implementing immediately executable judgment. In other words, these two SEMAs do not contain a specific provision on land execution under immediately executable judgment. Thus both SEMA no. 3 of 2000 and SEMA no. 4 of 2001 have not been able to cover the problems regarding the execution of immediately executable decree, particularly on land execution.

B. Legal Certainty and Equity of Land Execution under Immediately Executable Judgment (Uitvoerbaar Bij Voorraad) as regulated in SEMA No. 3 of 2000 and SEMA No. 4 of 2001 on Immediately Executable Judgment.

In practice, immediately executable judgment still result in problems, these problems harm both the community and the court. The requirements and procedures of execution of immediately executable judgment have been regulated in SEMA no. 3 of 2000 and SEMA no. 4 of 2001. In practice, the implementation of immediately executable judgment faces various obstacles, both technical and non-technical problems. These obstacles may stem from the court (in this case, judge, clerk, and bailiff) in the form of unclear instruction, or mistakes in the object of execution, or from the community (defendant) who refuse and resist the execution. The problems arising in the implementation of immediately executable judgment result in legal uncertainty and inequity for the plaintiff. However, in this case, immediately executable judgment is beneficial for the plaintiffs whose ownership right is held by the defendant unlawfully. The defendant can request the Head of District Court to execute the ruling without waiting for a decree with permanent legal force. Accordingly, the plaintiff, as the winner, can enjoy their win. This is consistent with the principle of quick, simple, and cheap justice because it closes the possibility for unfair defendant to make any legal attempt and delay the execution. The settlement of civil case (land dispute) in District court may be time-consuming, it can be years. This harms the justice-seeker, i.e. Plaintiff, whose land is held by the defendant unlawfully. Accordingly, immediately executable judgment is an answer for the plaintiffs to accelerate the process of land acquisition from the defendant, who deliberately exposes the weaknesses of the civil case, as regulated in HIR and RBg. Commonly, the implementation of immediately executable judgment is risky. One of the risks emerge when the execution has been carried out, yet the decree is annulled in the higher instance. This situation, of course,harms the defendant. This can be settled in two manners, namely:

a. When the plaintiff holds the object in dispute, the defendant can file a recovery execution to the Head of the District court. It should be immediately executed and handed over to the defendant without a lawsuit because the execution of immediately executable judgment is an entity of the Supreme Court decree that has attained permanent legal force; and

b. If the disputed land has been transferred to the third party due to a lawful right such as transaction or grant, the recovery requires a lawsuit process by filing a lawsuit against the plaintiff and the third party, or anyone who holds the land. The judge who handles that new lawsuit can make immediately executable judgment based on the evidence of Supreme Court decree which has attained permanent legal force. Then, the decree is executed and the disputed object is handed over to the defendant after filing a request to the Head of District Court.

The third-party, as the buyer, or grantee who hold the disputed land should also gain legal protection without sacrificing the interest of the owner. The third-party can file a lawsuit against the plaintiff for compensation, and immediately executable judgment
The execution of immediately executable decree (Uitvoerbaar bij Voorraad) can be done if the winning party files a request to the Head of the District Court. Then, if the the decree/case is in the first appeal, before the decree is implemented, a request can be filed to the Head of High Court beforehand, if the decree/case is in appeal, the request for implementation is filed to the Head of Supreme Court. In its implementation, the execution of immediately executable decree holds some requirement, namely, a guarantee which value is equal to the executed object to prevent harms to other parties when in the future, there is a decree that annuls the previous court decree (SEMA no. 3 of 2000. SEMA No. 4 of 2001). This SEMA is addressed to the Judge of District Court, so that they do not easily make an immediately executable decree because it often faces difficulties during the execution. The issuance of SEMA can limit judges to grant immediately executable judgment. This decree often leads to problems, because the appeal decree can be different from the first-instance decree. This is in agreement with Bagir Manan during the inauguration of five Heads of High Court on March 26, 2007. He states that immediately executable judgment often results in problems, especially when the appeal decree is in contrast with that of first-instance. This acts as boomerang for the court because the court will be blamed. If a decree with permanent legal force has been executed, but then it is annulled by the appeal decree, the object should be returned to the first owner without lawsuit process as a form of right recovery. The steps of right recovery are as follow:

1. An applicant can file a right recovery to the Head of District Court.
2. The implementation of right execution is carried out following the real execution procedure.
3. If the object has been transferred, the defendant of execution in the case with permanent legal force can still claim compensation equal to the object that has been executed under immediately executable.
4. If a case has been ruled but has not attained permanent legal force, yet the settlement is made outside the court by setting aside the instruction of the ruling, then that reconciliation is broken down by one of the party, the decree with permanent legal force is the one that can be executed. However, the party who feel being harmed due to the broken promise, they can file a lawsuit based on default.
5. In such a case, the Head of District Court can postpone the execution of that decree with permanent legal force.

Another problem regarding the implementation of land execution under immediately executable decree is protracted process due to less scrupulous claim from the plaintiff, one of the factors underlying this problem is the absence of proper use of positive law. This implies that such a decree is easy to make although undergoing a procedure (for instance, asking permission to the High Court) under SEMA no. 3 of 2000 and SEMA no. 4 of 2001. Another problem also occurs often, a permission has been granted, then it is revoked due to new considerations. This makes the land execution cannot be carried out. The author takes an example from one of the scientific paper, there was a condition where the plaintiff's lawsuit was granted using immediately executable judgment. The objects of the lawsuit were some land parcels and buildings located in the legal territory of another district court. The district court has requested assistance for performing the execution, which was granted by the head of District court without consent from the Head of concerning High Court. Meanwhile, the defendant filed an appeal. Then a new fact was revealed, it was found that some objects disputed were held by various institutions. Then the holder of these lands filed a protest in the form of third-party lawsuit (eksekusioriale derden verzet) to the court where the object is located. The district court then asked a guideline to the High Court, in the end, the High Court rejected that request. The High Court rejected the request, and one day before the execution the High Court issued an instruction to postpone the execution. Consequently, land execution was delayed. From the example above, the author argues that this phenomenon exhibits that the plaintiff's expectation of winning and taking advantages from the winning failed. He should wait for the issuance of decree with permanent legal force, which is time-consuming. This reflects legal uncertainty and inequity for the disputing parties regarding the status of the land. Thus, the author argues that immediately executable judgment made by the Judge and its execution does not completely provide legal certainty and equity in land dispute. Therefore, the requirement stated in SEMA no. 3 of 2000 and SEMA No. 4 of 2001 should be taken into account. Furthermore, it is necessary to create a specific regulation regarding the implementation of land execution under immediately executable judgment given that the existing regulation is general in nature. This is important since the execution under immediately executable judgment in judiciary practice in Indonesia increases. Besides, as Bagir Manan states, many land execution under immediately executable judgment cannot be implemented and troublesome. Meanwhile, with regard to guarantee as the form of protection for the concerning party. A solution should be made so it would not burden the plaintiff or harm the defendant when the immediately executable judgment is already implemented but then annulled in the higher instance.

E. CLOSING

1. Conclusion

It is concluded that provisions in SEMA no. 3 of 2000 and SEMA no. 4 of 2001 regulates only general matters on the implementation of land execution under immediately executable judgment. There has been no regulation specifically regulating the implementation of execution, particularly land execution under immediately executable judgment. Accordingly, the author argues that SEMA no. 3 of 2000 and SEMA no. 4 of 2001 have not been able to cover problems related to the execution of immediately executable judgment, particularly those related to land execution.

2. Recommendation

Designing a legal product that specifically regulates the implementation of execution, especially land execution under immediately executable judgment. This is important to ensure the legal certainty and equity for the concerned parties during the land execution under immediately executable judgment.
Considering that to date, the implementation of land execution under immediately executable judgment often faces various problems.

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