OPEN ACCESS
Scholars International Journal of Law, Crime and Justice
Abbreviated Key Title: Sch Int J Law Crime Justice
ISSN 2616-7956 (Print) |ISSN 2617-3484 (Online)
Scholars Middle East Publishers, Dubai, United Arab Emirates
Journal homepage: https://saudijournals.com

Original Research Article

Reconstruction of Civil Case Execution Regulation on the Implementation of Uitvoerbaar Bij Voorraad Based on Justice Value

Saddam Husein[1*], Widayati[1], Anis Mashdurohatun[1], HM.Ercham Amin[2]

[1]Sultan Agung Islamic Unisversity, Semarang, Indonesia
[2]Lambung Mangkurat (ULM) University, Banjarmasin, Indonesia

DOI: 10.36348/sijlcj.2023.v06i04.004 | **Received:** 20.02.2023 | **Accepted:** 04.04.2023 | **Published:** 15.04.2023

***Corresponding author:** Saddam Husein
Sultan Agung Islamic Unisversity, Semarang, Indonesia

Abstract

The Institute for Immediate Decisions (*UitVoerbaar Bij Voorraad*) currently does not prioritize human rights and equal protection before the law, because the regulations regarding the Implementation of Immediate Decisions (UitVoerbaar Bij Voorraad) are uncertain in their application. The purpose of this study is to find and analyze the Civil Case Execution Regulations regarding the Implementation of Immediate Decisions (UitVoerbaar Bij Voorraad) which currently have not been able to realize Pancasila justice; Weaknesses of the Civil Case Execution Regulations regarding the Implementation of Immediate Decisions (UitVoerbaar Bij Voorraad) in Indonesia at this time; and Reconstructing Civil Case Execution Regulations for the Implementation of Immediate Decisions (UitVoerbaar Bij Voorraad) based on the Pancasila Value of Justice. In this study, the constructivism paradigm was used, the socio-legal research approach method. The data sources in this study consist of primary data sources and secondary data sources consisting of primary legal materials, secondary legal materials and tertiary legal materials. Related to qualitative descriptive data analysis. Legal theory as an analysis of Grand Theory (Pancasila justice theory), Middle Theory (legal system theory), Aplaid Theory (Progressive Law). The findings of the study are that (1) the Civil Case Execution Regulation on the Implementation of Immediate Decisions (UitVoerbaar Bij Voorraad) based on the Value of Justice has not been able to realize Pancasila Justice, because it does not prioritize human rights and legal certainty as characteristics of Pancasila justice. Apart from that, it appears that unequal treatment before the law, because of the regulations as stipulated in article 180 paragraph (1) HIR / article 191 paragraph (1) RBG, there must be Authentic Evidence of the Plaintiff, so the Immediate Application of the Decision cannot be dropped if each - each party has authentic evidence. (2) Weaknesses in the Civil Case Execution Regulations regarding the Implementation of Immediate Decisions (UitVoerbaar Bij Voorraad). In substance, this regulation is still floating (floating norm) so that the Immediate Decision cannot be implemented and executed (non-executable). This is what causes the legal structure, namely the Court does not comply with the Application of the Immediate Decision (Uitvoerbaar Bij Voorraad). This fact can become a legal culture that is not good, both within the judiciary itself and among justice seekers and society. (3) Reconstruction of Civil Case Execution Regulations on the Implementation of Immediate Decisions (UitVoerbaar Bij Voorraad) based on the Value of Justice by Removing Article 180 paragraph (1) HIR / Article 191 paragraph (1) RBG, to realize Pancasila justice which prioritizes human rights and equality before the law.

Keywords: Reconstruction, Regulation, Execution, UitVoerbaar Bij Voorraad.

A. INTRODUCTION

Settlement of civil cases or civil disputes can be resolved through court or out of court. Settlement out of court or commonly also called non-litigation method. Out-of-court settlement methods, the rules regarding the process and evidence as stipulated in the Civil Procedure Code are not applied. The settlement of disputes outside the court can still be distinguished, among others, by way of negotiation, mediation, through mediation of arbitration.

In addition to the method of solving non-litigation cases above, it is also known as settlement through court or commonly known as litigation. If a party who feels their interests have been harmed chooses the court as a means of resolving their dispute, it means that the party concerned entrusts a third party,

in this case a judge as a state official, to process and at the same time resolve the dispute. In this case the rules contained in the Civil Procedure Code are used as a reference or as the rules of the game [1].

The systematic classification of civil dispute resolution as described above, namely the first by means of non-litigation and the second by way of litigation, is a sequence indicating the scale of priority. The fact shows that the non-litigation method is the main choice of the parties, while the settlement of disputes through the court will only be carried out if the non-litigation method is not successful in resolving the problem. From this point of view it can be said that the court is the last resort or the last resort for justice seekers (justiciabelen) or in other terms it is often referred to as the last resort.

Regarding which way to choose, the parties are also influenced by several factors, including their economic capabilities. If a party is economically disadvantaged, it is likely that he will choose a non-litigation method to resolve his dispute, because it is known that litigation in court requires a large amount of money. In addition to economic factors, the level of trust in the judiciary will also influence the choice of a party. What and how his impression of the court can influence his choice whether to settle his case out of court or through court. The better the impression of the court, the more likely it is to choose a court as a means of resolving disputes.

Conversely, a party will be more inclined to choose non-litigation if the impression of the court is not good.

Settlement of civil disputes through the courts starts from the registration of the case until the decision is made by the judge, but with the judge's decision alone it has not restored the rights of a party because the judge's decision is only limited to declaring the loser and the winner and contains an order to the lost to carry out the decision. The rights of the aggrieved party will only be restored if the judge's decision has been carried out, either voluntarily by the loser and if the losing party does not want to carry out the court's decision voluntarily, then the party who wins the case can request forced implementation of the decision or execution. According to Sudikno Mertokusumo states:

"A court decision is meaningless if it cannot be implemented. Therefore, the judge's decision has executorial power, namely the power to carry out what is stipulated in the decision by force by means of the state [2].

Guided by the description above, it is sufficient to provide an understanding of how big a party's expectations are for the execution or implementation of a judge's decision. Indeed, this should be the case, because what does it mean if you are only called a winner if your rights are not immediately restored. The parties have spent a lot of money and sacrificed their time for so long because they are based on optimism that they will soon come out victorious.

But how disappointed after being declared the winner it turned out that the awaited decision also could not be carried out. Because of this, however, delays in the implementation of decisions or executions or due to some reason so that the judge's decision cannot be carried out or executed at all can lead to disappointment and even distrust, especially those who win against the court institution in the sense of distrust of the legal actors involved in it.

Various scrutiny can arise, starting from the issue of judge injustice, bribery, discrimination to the problem of unprofessional judges including their lawyers. In particular, we in Indonesia must admit that since the end of 1998, as the beginning of reform and at the same time the end of the New Order regime, the public's focus on the courts has become increasingly prominent and the result is that public trust in the courts has been at the lowest level. Even Achmad Ali states:

Sociologically, the level of trust of Indonesian citizens towards legal institutions, including court institutions, is already at the level of a "bad trust society". The main cause of the further destruction of public trust is the current government's lack of seriousness in enforcing the law. Community optimism for more law enforcement and the emergence of an era of law enforcement that was consistent with the overthrow of Suharto has now turned into pessimism [3].

Above the author has described the public spotlight on the products of court decisions, however, we also have a lot to learn about placing courts in a more objective manner. It is too big to expect the court to give a fair decision, in fact we have placed the court on an unfair side. They (all legal actors) including other court officials who are involved in the case process are also ordinary people who have many weaknesses and many needs. It is impossible for a judge's decision to give a sense of fairness (satisfying) to both parties. For those who win, the decision may be felt to have given a

[1] M. Yahya Harahap. 2007. Ruang Lingkup Permasalahan Eksekusi Bidang. Perdata. Jakarta: PT. Sinar Grafika. Ibrahim, p. 6

[2] Sudikno Mertokusumo, 2002, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, p. 239

[3] Achmad Ali. 2004. *Sosiologi Hukum, Kajian Empiris Terhadap Pengadilan*. BP IBLAM, Jakarta. P. 19

sense of fairness, but for those who lose, they may feel the opposite. The focus on the fairness or unfairness of the judge's decision, in civil cases, which is also a cause for concern, especially for those who win, is the inability to enforce the judge's decision.

It seems that civil cases are not enough if we only question what has been decided by the judge, in other words how the judge's decision in certain cases is, but what is more urgent is whether the judge's decision can be implemented. There are many cases of judges' decisions that have permanent legal force, but for some reason the decisions cannot be carried out or executed, even though it is known that the judge's decision apart from having binding power on the parties to the case also has executorial power.

Regarding the application of an immediate decision (UitVoerbaar Bij Voorraad), if one pays attention it is very rare and rarely practiced in decisions in court, especially in the Kendari District Court. Immediate Decision (UitVoerbaar Bij Voorraad), as stipulated in Article 180 paragraph (1) H.I.R. / Article 191 paragraph (1) R.Bg, states "That the District Court may order the temporary implementation of its decision even though there is resistance or appeal if there is authentic evidence or there is a letter written by hand which according to the applicable provisions has the power of proof, or because previously there was a decision that had definite legal force, as well as if a provisional claim was granted, and it involved a dispute over property rights.

The District Court or the Judges must really pay attention to these requirements in imposing a Decision that can be executed first (Uit Voerbaar Bij Voorraad), because even if the parties submit an objection or appeal, the decision can already be implemented or executed. So the District Court or the Judges must be extra careful in making decisions that can be implemented in advance (UitVoerbaar Bij Voorraad), because if the District Court decision has been carried out or executed, then it turns out that at the level of appeal or cassation the district court decision that has been executed is canceled by the court of appeal or cassation, then problems will arise because it will be difficult to return to its original state.

Decisions that can be implemented beforehand (uitvoerbaar bij voorraad) as stipulated in Article 180 paragraph (1) H.I.R. / Article 191 paragraph (1) the RBG, if implemented properly and correctly, is very useful in order to speed up the settlement of cases in court, because so far it is common knowledge that filing a case in court takes a very long time, even up to decades years in its completion, not to mention the costs incurred by the parties which took a long time and of course require enormous costs. So that this institution of instant decision (UitVoerbaar Bij Voorraad), if it is implemented seriously and correctly, then of course it is one of the ways or ways to speed up the settlement of cases in court.

The research that I conducted at the Kendari District Court concerned the application of the immediate decision (UitVoerbaar Bij Voorraad), I obtained data that the implementation or application of Article 180 paragraph (1) H.I.R. / article 191 paragraph (1) RBG. In the Kendari district court, regarding an immediate decision (uitvoerbaar bij voorraad), there is only one decision for ten years, this data shows how lacking the application of Article 180 paragraph (1) H.I.R. / article 191 paragraph (1) RBG. the.

Immediate Decision (UitVoerbaar Bij Voorraad), from 2013 to 2022, or for ten (10) years, it turns out that the decision regarding the Immediate Decision (UitVoerbaar Bij Voorraad) only amounts to 1 (one) decision.

The decision concerned a case whose object of dispute was land. **The decision is: Kendari District Court Decision No.30/PDT.G/2017/PN.KDI.**

The object of the dispute is the land issue. While the evidence submitted is Authentic Evidence, namely Certificates of Property Rights. This has met the requirements as stipulated in Article 180 paragraph (1) H.I.R. / article 191 paragraph (1) RBG. For an immediate decision to be made (UitVoerbaar Bij Voorraad).

B. RESEARCH METHOD

The research method used is non-doctrinal [4]. This research is a qualitative research, the type of data used is primary and secondary data [5]. The technique of collecting data is through literature study and field focus group discussions, interviews and questionnaires) [6]. The data collected was analyzed through descriptive analysis [7].

[4] Mukti Fajar. Dualism of Normative and Empirical Legal Research. Yogyakarta: Student Library. 2010.

[5] Irwansyah, Ahsan Yunus, Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel, Mirra Buana Media , Yogyakarta. 2020. Anis Mashdurohatun, Gunarto & Adhi Budi Susilo, The Transfer Of Intellectual Property Rights As Object Of Fiduciary Guarantee, Jurnal Akta. Volume 9 No. 3, September 2022 pp.378-391. Yeltriana, Ideal Reconstruction Of Protection For Layoff Victim At The Industrial Relations Court Based On Justice, International Journal of Law, Government and Communication, Volume: 4 Issues: 14 [March, 2019]. pp.32-49.

[6] Mahyuni, Land Acquisition of Toll Roads for Public Interest in The Kendal District, Jurnal Akta, Volume 6 Issue 1, March 2019,pp. 153-158, Anis Mashdurohatun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, International Journal of

C. RESEARCH RESULTS

1. Regulations for the Execution of Civil Cases Against the Implementation of UitVoerbaar Bij Voorraad in Indonesia are not currently based on the value of justice

Pancasila justice is pure justice from the Indonesian nation, pure justice is obtained from the principles of Pancasila justice obtained from various ethnic groups in Indonesia. Therefore, justice based on Pancasila is part of the Unitary State of the Republic of Indonesia [8].

The characteristics of justice based on Pancasila are based on the first principle of Pancasila, namely Belief in One Almighty God. in other words, the characteristics of justice based on Pancasila reflect a form of justice based on Belief in the One and Only God. The justice that appears is justice that comes from God which is represented to humans to create fair and civilized humans and justice for all Indonesian people.

The characteristics of justice based on Pancasila which are based on the second principle of Pancasila, namely just and civilized humanity, show that justice is only for the benefit of humans as social beings. Humanity gives the meaning that justice gives what is the human right. The right given is in the form of justice that is realized by the authorities or the government. The character of justice provides protection to humans in obtaining justice. Providing protection of human rights as civilized beings by humanizing humans as social beings who need justice.

Characteristics of Justice based on Pancasila Pancasila fosters unity for the realization of justice in Indonesia. In accordance with the third principle of Pancasila, namely the unity of Indonesia, justice that is realized requires mutual agreement in determining between justice and injustice. This agreement requires unity in order to achieve justice. The characteristics of justice based on Pancasila need to be realized with the same perception of the meaning of justice. The same perception requires unity in realizing justice. The principle of Indonesian unity fosters the same attitude and perception in interpreting the meaning of justice. Justice in the sense of equality, theoretically requires a common perception and point of view about the meaning of justice. The characteristics of justice based on Pancasila require a common perception of justice by fostering national unity and integrity.

The characteristics of justice based on Pancasila are in accordance with the fourth principle of Pancasila, namely democracy led by wisdom in deliberations/representation. This principle upholds the democratic state system in order to realize the justice desired by citizens through their representatives. With a democratic system, it is hoped that justice will be realized through people's representatives in determining policies which of course provide justice.

The characteristics of justice based on Pancasila are based on the fifth principle of Pancasila, namely social justice for all Indonesian people, providing fair equality for all Indonesian people. This equality provides the fairest embodiment of justice for citizens to obtain legal protection. This equal legal protection reflects legal protection to be treated equally before the law for all citizens in order to achieve justice.

The characteristics of Pancasila justice are part of the form of justice in the form of principles in forming law. Justice based on Pancasila prioritizes human rights and equal protection before the law in its realization as the principles of law formation based on Pancasila. the characteristics of justice based on Pancasila in the form of protection of human rights and equality before the law, of course, cannot be separated from the principles of the five precepts of Pancasila. justice based on Pancasila is processed from thoughts about five principles, namely Pancasila as the principle of law formation based on Pancasila justice which prioritizes human rights and equal protection before the law.

However, based on the results of the study, it was found that there were weaknesses in civil case execution regulations regarding the application of instant decisions (uitvoerbaar bij voorraad) as stipulated in Article 180 paragraph (1) HIR / article 191 paragraph (1) RBG, which was dissected using Lawrence's legal effectiveness theory approach. M. Friedmann, every legal system consists of 3 (three) sub-systems, namely:

1. **Aspects of the sub-system of the substance (substance of the law)**

Legal substance includes legal material, for example as stated in laws and regulations and policy regulations. Regarding Article 180 paragraph (1) HIR / article 191 paragraph (1) RBG which requires the Plaintiff to have Authentic Evidence, but if each party to the litigation has Authentic Evidence then the application of UitVoerbaar Bij Voorraad cannot be dropped and applied, so that it can be said whereas, in

Applied Business and Economic Research, Vol.15 Issue.20. 2017, see too Sukarmi et.al, Impact of Traffic Congestion on Economic Welfare of Semarang City Community, Journal of Xidian University ,Volume 16, ISSUE 2, 2022.

[7] Anis Mashdurohatun, Gunarto & Oktavianto Setyo Nugroho Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object Of Credit Guarantee To Improve Community's Creative Economy, JPH: Jurnal Pembaharuan Hukum, Volume 8, Number 3, December 2021.

[8] Maria Farida Indrati Soeprapto, *Ilmu Perundang-undangan: Dasar-dasar dan Pembentukannya* (Yogyakarta: Kanisius, 1998), p 39.

substance, this regulation is still floating (floating norm) so that the Immediate Decision cannot be applied and executed (non-executable).

2. Aspects of the legal structure sub-system (structure of law)

The legal structure is the institution/organization, personnel and law enforcement authorities. Regarding Article 180 paragraph (1) HIR / article 191 paragraph (1) RBG where if each party in a case has Authentic Evidence then the application of UitVoerbaar Bij Voorraad cannot be imposed and applied, this is what causes the legal structure, namely the Court of First Instance not carry out the Implementation of the Immediate Decision (Uitvoerbaar Bij Voorraad) so that this execution regulation cannot work as it should;

3. Aspects of the legal culture sub-system

Legal culture is the behavior and mindset of the community and law enforcement personnel. Regarding Article 180 paragraph (1) HIR / article 191 paragraph (1) RBG, there are weaknesses in its implementation due to the low legal awareness of the judiciary complying with decisions immediately and the low legal awareness of the community which is colored by doubts about court apparatus due to seeing the facts of the application of decisions and immediately can not run as justice seekers hope.

2. Weaknesses Behind the Judiciary Not Implementing Civil Case Execution Regulations Against the Current Implementation of Uitvoerbaar Bij Voorraad in Indonesia

The implementation of decisions that have legal force can still be carried out in two ways, namely voluntarily and by force. The judge's decision is carried out voluntarily, meaning that the losing party actually accepts and complies with the contents of the judge's decision without having to be carried out by the court; 11 The forced implementation of the decision is carried out because the losing party is not willing, has no good intention to carry out the judge's decision voluntarily. The implementation of the decision by force is carried out based on the request of the party who won the case by submitting a request both orally and in writing to the Chairperson of the District Court which decided the case. Based on the request from the party that won the case, the Chairperson of the District Court summoned the defeated party to be warned (aanmaning) to carry out the Judge's decision voluntarily within 8 (eight) days after being warned (Article 196 HIR/208 RBG). If within 8 (eight) days the losing party does not carry out the Judge's decision or is absent after being reprimanded, then the Head of the District Court with his decision letter orders the Registrar or Bailiff to carry out the court's decision by confiscating movable property which is estimated to cover the amount payment of money to be paid by the losing party plus execution costs (Article 197 HIR/208 RBG).

The implementation of the Judge's decision is carried out by the Registrar or Bailiff based on the decision letter of the Chairman of the District Court who decided the case. When carrying out an execution, the clerk or bailiff makes an official report on the execution which is witnessed by two witnesses. The Court may request the assistance of the security forces (Polri or TNI) to maintain security during the execution.

Whereas in the Application and Implementation regarding the Immediate Decision (UitVoerbaar Bij Voorraad) in accordance with article 180 paragraph (1) HIR / article 191 paragraph (1) RBG, it has been specifically regulated in the Circular Letter of the Supreme Court of the Republic of Indonesia. No. 03 of 2000.

The object of this study is the Kendari District Court / PHI / Corruption Class IA, Southeast Sulawesi Province, which is located at Jalan Mayjend Soetoyo No. 37, Tipulu Village, West Kendari District, Kendari City, Southeast Sulawesi Province. The Kendari District Court has the authority, one of which is to examine, decide and resolve disputes in civil cases.

The Kendari District Court has been able to resolve cases in 2013 to 2022 of 1,071 civil cases. The details can be seen in table 1.1. as follows:

Table 1.1

No.	Year	Civil Cases	Decision Necessarily	Verdict Execution Necessarily
1	2013	92	-	-
2	2014	91	-	-
3	2015	110	-	-
4	2016	80	-	-
5	2017	91	1	-
6	2018	110	-	-
7	2019	92	-	-
8	2020	136	-	-
9	2021	124	-	-
10	2022	145	-	-
	Total	**1.071**	**1**	-

Based on the results of the research above, it turns out that in practice, the Application and Implementation of Immediate Decisions (UitVoerbaar Bij Voorraad) are still very rarely carried out by the District Courts, especially the Kendari District Court. We can see this from the facts, especially in the Kendari District Court, based on research results, we obtained data in which the samples we took were decisions from 2013 to 2022, that is, for 10 (ten) years, it turns out that the decisions handed down concerning decisions that can be implemented beforehand (uitvoerbaar bij voorraad) only amount to 1 (one) decision. This is of course due to various influencing factors. The description is as follows:

The type of Civil Case that was dropped which involved an immediate decision (uitvoerbaar bij voorraad) was only 1 (one) decision. The District Court's decision is as follows:

Decision No. 30/Pdt.G/2017/PN.Kdi. Namely the case between H. HERRY ASIKU, SE. -- against – 1. Njo. Winyoto Gunawan, 2. Mbatong. In this case the panel of judges at the Kendari District Court, in its decision, stated:

1. Declare that the actions of the Defendants in controlling, admitting, transferring, obstructing the plaintiff from using and selling land materials owned by the plaintiff are illegal and against the law;
2. Stating that the Certificate of Ownership Number 3233 of 2012 in the name of Njo Winyoto Gunawan, Measurement Letter no. 72 / Lepo-lepo / 2012 as well as other deeds and letters, which relate to the disputed object land owned and made by the defendants declared to have no legal force;
3. Punish the Defendant and anyone related to the object of the dispute to immediately vacate the object of the dispute and hand it over to the Plaintiff in perfect condition without any conditions;
2. Declare that this decision can be carried out first even though the Defendant declares an Appeal or Cassation (Uitvoerbaar Bij Vorraad);
3. Punished the Defendants to pay all costs of the case jointly and severally and up to now it is estimated at Rp. 2,121,000.- (Two million one hundred and twenty one thousand rupiahs);

From this decision, the Court has given legal considerations in accordance with the provisions of the law in this case article 180 paragraph (1) HIR / article 191 paragraph (1) RBG. namely legally fulfilling the requirements stipulated in article 180 paragraph (1) HIR / article 191 paragraph (1) RBG. That is:

The legal considerations of the panel of judges mentioned above clearly base their considerations on one of the requirements stipulated in article 180 paragraph (1) HIR / article 191 paragraph (1) RBG. That is about the existence of authentic evidence in making decisions that can be implemented first (uitvoerbaar bij voorraad).

If we examine the legal considerations of the panel of judges mentioned above, in passing a decision that can be executed beforehand (uitvoerbaar bij voorraad), it is based on evidence of an Authentic Deed.

Referring to the legal basis of Article 180 paragraph (1) HIR / Article 191 paragraph (1) RBg, the decision has fulfilled the requirements in which there is authentic evidence or there is a handwritten letter which, according to the provisions of the applicable law, has evidentiary power. However, the decision does not fulfill the requirements further regulated in SEMA Number 3 of 2000 and SEMA Number 4 of 2001.

As a basis for consideration in making decisions that can be executed beforehand (uitvoerbaar bij voorraad) as stipulated in article 180 paragraph (1) HIR / article 191 paragraph (1) RBG. What reads in full is: "The District Court may order the temporary implementation of a decision even though there is resistance or appeal if there is authentic evidence or there is a letter written by hand which, according to the applicable provisions, has the force of proof, or because previously there was a decision that had definite legal force., so also if there is a partial demand that is granted or also regarding disputes regarding property rights.

The uitvoerbaar bij voorraad decision mentioned above, until now or since the writing of this dissertation, the Kendari District Court decision has not been executed by the Kendari District Court, according to the Kendari District Court statement regarding the uitvoerbaar bij voorraad decision that has not been implemented, due to the request for execution submitted by the plaintiff who was declared victorious in the case did not obtain permission from the Southeast Sulawesi High Court. Against the uitvoerbaar bij voorraad decision, the defendants have filed an appeal and the Southeast Sulawesi High Court has annulled the uitvoerbaar bij voorraad decision, and has been upheld by the Supreme Court of the Republic of Indonesia.

As regulated in article 180 paragraph (1) HIR / article 191 paragraph (1) RBG. Whereas the decision of the district court whose ruling stated that the decision could be carried out beforehand (uitvoerbaar bij voorraad), could already be implemented even though the defendant declared an appeal or cassation.

Even though it does not yet have permanent/certain legal force, because the defendant filed an appeal, the Kendari District Court has been able to execute the object of the dispute, in accordance with the provisions of article 180 paragraph (1) HIR / article 191 paragraph (1) RBG. Submission of an appeal or cassation by the defendant does not preclude the

implementation of the execution. However, based on a Supreme Court Circular letter, if a district court decision states that it can be carried out first (uitvoerbaar bij voorraad), if an execution is to be carried out, it must obtain permission from the Head of the High Court, in addition to that the plaintiff as the petitioner for the execution must deposit a security deposit in the amount the value of the object to be executed. This is one of the obstacles faced by the plaintiffs, in submitting a request for the implementation of the decision (execution), even though the plaintiffs know that the case can be carried out or executed, but in general the plaintiffs object and are unable to pay/keep the deposit in accordance provisions required by the District Court based on a Circular Letter of the Supreme Court. If the reality is like that, then the institution that regulates the implementation of District Court decisions that can be implemented first (uitvoerbaar bij voorraad) as stipulated in article 180 paragraph (1) HIR / article 191 paragraph (1) RBG. This becomes useless and ineffective, because even though the District Court has passed a decision that can be implemented beforehand (uitvoerbaa bij voorraad), its implementation is very difficult and convoluted, for example, in order to implement the district court's decision, it is required to obtain permission from Court of Appeal, and in addition to these requirements, the plaintiff or the petitioner for execution must deposit bail at the District Court.

With these difficulties, the implementation of uit voerbaar bij voorraad is useless and ineffective, and the ideals of fast, simple and low-cost cases cannot be achieved. This resulted from the hesitation of the Supreme Court of the Republic of Indonesia, in implementing the uitvoerbaar bij voorraad institution. This is reflected in several Circular Letters and Instructions of the Supreme Court of the Republic of Indonesia, which limit the application of the uitvoerbaar bij voorraad.

Based on the statement of the Assistant Supreme Court Justice (Former Kendari District Court Judge), Mr. TAHIR, SH., MH., regarding the implementation of Uitvoerbaar bij voorraad (execution of court decisions that can be implemented first) in accordance with Article 191 paragraph (1) RBG.

According to Mr. TAHIR, that the position of authentic evidence made by a Notary or PPAT has a perfect and binding evidentiary value (wolledig en bindende bewij kracht). If the lawsuit filed is supported by authentic deed evidence and it turns out that the truth of the deed cannot be paralyzed by the defendant with evidence from the opponent, the conditions for granting the request for a uitvoerbar bij voorrad decision have been met. However, in practice at the Kendari District Court, even though the claim has been supported by evidence having a perfect and binding evidentiary value, the possibility of the decision being canceled at the appeal or cassation level remains open, so it is better to refuse to pass a uitvoerbar bij voorrad decision. In relation to a uitvoerbaar bij voorraad decision (a decision that can be executed beforehand), there is no difference in the strength of proof of a notarial deed with other deeds, even a private letter, as long as it is not disputed by the opposing party (Vide. SEMA 3 of 2000 Point 4a ("Lawsuit is based on on evidence of an authentic letter or handwritten letter (handschrift) which the truth about the contents and signature is not disputed, which according to the law does not have the strength of evidence").

According to Mr. TAHIR,, the lack of implementation of the uitvoerbaar bij voorraad (a decision that can be implemented beforehand) as stipulated in Article 180 paragraph (1) HIR / article 191 paragraph (1) RBG, is related to the prudence of the the Panel of Judges in making decisions that can be implemented earlier, because such decisions have very risky consequences because they can lead to legal problems in the future, for example, if the decision turns out to be at the appeal or cassation level, the decision is canceled, then a legal issue arises , because the decision of the district court has been carried out, and if this problem occurs, it is very difficult to restore it to its original state. Another obstacle faced by the district court is the need for permission from the High Court to implement the district court's decision regarding the uitvoerbaar bij voorraad decision, and even the High Court still requires consultation with the Supreme Court [9].

Thus, how complicated is it to carry out the uit voerbaar bij voorraad decision. Not only that, if after obtaining approval from the High Court, other requirements are still needed, namely, the Plaintiff is still required to deposit collateral with the district court in an amount equivalent to the object of the goods to be executed. Of course all of these requirements are for the sake of minimizing the risk of legal issues occurring in the future, if something goes wrong to return to the state as before. For this reason, the Supreme Court has issued several Circular Letters which basically contain additional requirements that must be met by the district courts if they wish to pass a decision uit voerbaar bij voorraad (a decision that can be implemented first), even if it has fulfilled the elements contained in article 180 paragraph (1) HIR / article 191 paragraph (1) RBG. Judges are still advised to be more careful.

From the data that can be seen at the Kendari District Court, which concerns the *uitvoerbaar bij voorraad* decision that was handed down, within a period of 10 (ten) years, namely 2013 to 2022, it is felt that only 1 (one) decision in the case was minimal. And

[9] M. TAHIR, S.H., M.H., Wawancara Hakim Pengadilan Negeri Kendari, tanggal 10 Desember 2022

regarding cases of unlawful acts, namely land ownership dispute cases. Especially with regard to land cases, it is still often found at the Kendari District Court trial that authentic evidence submitted by the parties overlaps (double), namely proof of ownership, in this case, double or overlapping certificates of ownership of land, so if something like this is found, then of course the Panel of Judges really have to be extra strict in considering and passing decisions that are true and fair. So even though it has fulfilled the elements in article 180 paragraph (1) HIR / article 191 paragraph (1) RBG. Regarding the existence of authentic evidence, but if a case is found regarding the existence of double ownership based on this authentic evidence, then of course the judge must be really extra careful in passing the uitvoerbaar bij voorraad decision.

3. Reconstruction of Civil Case Execution Regulations Against the Implementation of *Uitvoerbaar Bij Voorraad* Based on the Value of Justice

Pancasila is an ideology that "is worth dying for in this country. It's not only the Unitary State of the Republic of Indonesia (NKRI) that is worth a price. At any cost, Pancasila must be defended as the state ideology. Viewed from a philosophical aspect, the entire Indonesian legal system cannot be separated from the view that Pancasila is Philosophische Grondslag (Grundnorm) [10].

According to Jimly Asshiddiqie, in forming/changing a good regulation it must be based on philosophical, sociological and juridical aspects, namely: the philosophy of the Indonesian nation which originates from Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia. (Article 2 of Law number 12 of 2011 concerning the Formation of Laws). Sociological Basis, Is a consideration or reason that illustrates that the law was formed to meet the needs of society in various aspects. The real sociological foundation concerns empirical facts regarding the development of problems and needs of society and the state. Judging from the implementation of Article 180 paragraph (1) HIR / Article 191 paragraph (1) RBG, it cannot work due to the low legal awareness of the judiciary complying with decisions immediately and the low legal awareness of the community which is colored by doubts about court apparatus due to seeing the facts of implementing decisions immediately can not run as justice seekers hope. And the Juridical Basis, Is a consideration or reason that illustrates that regulations are formed to overcome legal problems or fill legal voids by taking into account existing rules, which will be changed, or which will be revoked in order to guarantee legal certainty and a sense of justice for the community. The juridical basis concerns legal issues relating to the substance or material being regulated so that it is necessary to form new laws and regulations. Some of these legal issues include, among other things, outdated regulations, regulations that are not harmonious or overlapping, types of regulations that are lower than laws so that their effectiveness is weak, regulations that already exist but are inadequate, or regulations that do not exist at all. Likewise with regard to the construction of regulations regarding the execution of civil cases regarding the application of decisions immediately (uitvoerbaar bij voorraad) in Indonesia at this time, which are regulated in relation to Article 180 paragraph (1) HIR / article 191 paragraph (1) RBG, it is not clear juridically imperfect because there are no implementing regulations [11].

Results of the Reconstruction of Civil Case Execution Regulations on the Implementation of Immediate Decisions (UitVoerbaar Bij Voorraad) based on the Pancasila Value of Justice as referred to in Article 180 paragraph (1) HIR / article 191 paragraph (1) RBG, namely: Given that the benefits of this regulation are not proportional to the magnitude of the risks that arise , if the Immediate Decision has been executed then the Immediate Decision is canceled at the appeal or cassation level, it will be difficult to return to its original state, as well as the many requirements and restrictions from SEMA No. 3 of 2000 in implementing the Instantaneous Decision. So by removing Article 180 paragraph (1) HIR / Article 191 paragraph (1) RBG, it is the best solution to realize justice based on Pancasila values of justice which prioritizes human rights and equality before the law. So that this reconstruction can provide an answer to the anxiety of the people seeking justice that has been going on.

D. CONCLUSION

The Construction of Civil Case Execution Regulations in the Implementation of UitVoerbaar Bij Voorraad in Indonesia is currently not able to realize Pancasila Justice, because the regulations as stipulated in Article 180 paragraph (1) HIR / article 191 paragraph (1) RBG, related to the Implementation of Immediate Decisions require Evidence Authentic by the Plaintiff, the application of the Immediate Decision cannot be dropped if each party has authentic evidence, so that it can be said that, in substance, this regulation is still a floating norm, causing the Immediate Decision to not be implemented and executed (non executable)

[10] Sulistyani Eka Lestari, –*Pancasila Dalam Konstruksi Sistem Hukum Nasional*, Jurnal Negara Hukum Dan Keadilan, Volume 7, No. 2. Agustus 2018, p. 86. Teguh Prasetyo, Ari Pornomosidi, *Membangun Hukum Hukum Berdasar Pancasila* (Bandung: Nusamedia, 2014), p. 25. Teguh Prasetyo, *Keadilan Bermartabat, Perspektif Teori Hukum* (Bandung: Nusamedia, 2015), p. 25.

[11] Ralang Hartati, Syafrida. **"**Hambatan Dalam Eksekusi Perkara Perdata" Adil: Jurnal Hukum Vol.12 No.1. 2020.

Considering that the benefits of the regulation are not proportional to the magnitude of the risks that arise. And this is what causes the legal structure, namely the Court of First Instance not to comply with the Immediate Application of Decisions (Uitvoerbaar Bij Voorraad). By not implementing the Immediate Decision (Uitvoerbaar Bij Voorraad), the rights of justice seekers are deprived of it, and in this case it appears that there is unequal treatment before the law, because there is no obligation and certainty regarding the implementation of the Immediate Decision (Uitvoerbaar Bij Voorraad). This fact can become a legal culture that is not good, both within the judiciary itself and among justice seekers and society. In the judiciary, it will set a bad example for justice seekers, and doubts will arise in society towards the court. It can be said in another way that this regulation of instant decisions has not prioritized human rights, certainty and equal protection before the law as are the characteristics of Pancasila justice. Weaknesses resulting in the non-fulfillment of the implementation of Uitvoerbaar Bij Voorraad or the Immediate Decision, include (5) Matters namely: (1) The number of requirements and restrictions from SEMA No. 3 of 2000 in implementing the Instantaneous Decision. (2) Immediate implementation of a decision has very risky consequences and there will always be a potential risk of the decision being canceled at the appeal or cassation level, so it is very difficult to restore it to its original state, even though there is a guarantee from the plaintiff. (3) An immediate decision cannot be rendered if each party has authentic evidence. (4) Avoiding judges who deviate or side with certain parties. (5) The benefits of these regulations are not worth the big risks that arise. With the results of the reconstruction which emphasizes the existence of obligations and certainty in the imposition and application of Immediate Decisions in fact it cannot guarantee the risks that will arise, the Reconstruction of the Regulations on the Execution of Civil Cases on the Implementation of Immediate Decisions (UitVoerbaar Bij Voorraad) is based on the Pancasila Value of Justice namely: Given the benefits the regulation is not commensurate with the magnitude of the risks arising, if the Immediate Decision has been executed then the Immediate Decision is canceled at the appeal or cassation level, it will be difficult to return to its original state, as well as the many requirements and restrictions from SEMA No. 3 of 2000 in implementing the Instantaneous Decision. So by removing Article 180 paragraph (1) HIR / Article 191 paragraph (1) RBG, it is the best solution to realize justice based on Pancasila values of justice which prioritizes human rights and equality before the law. So that this reconstruction can provide an answer to the anxiety of the people seeking justice that has been going on.

BIBLIOGRAPHY

- Achmad, A. (2004). *Sosiologi Hukum, Kajian Empiris Terhadap Pengadilan*. BP IBLAM, Jakarta.
- Mashdurohatun, A., Gunarto, O. S. N., & Nugroho, O. S. (2021). Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object Of Credit Guarantee To Improve Community's Creative Economy. *J. Pembaharuan Huk*, *8*(3).
- Mashdurohatun, A., Gunarto, G., & Susilo, A. B. (2022). The Transfer of Intellectual Property Rights as Object of Fiduciary Guarantee. *Jurnal Akta*, *9*(3), 378-392.
- Mashdurohatun, A., & Arifin, Z. (2017). Gunarto,"The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia". *International Journal of Applied Business and Economic Research*, *15*(20).
- Yahya Harahap, M. (2007). Ruang Lingkup Permasalahan Eksekusi Bidang. Perdata. Jakarta: PT. Sinar Grafika. Ibrahim
- Irwansyah, A. Y. (2020). Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel, Mirra Buana Media, Yogyakarta.
- M. TAHIR, S.H., M.H., Wawancara Hakim Pengadilan Negeri Kendari, tanggal 10 Desember 2022
- Mahyuni. (2019). Land Acquisition of Toll Roads for Public Interest in The Kendal District, *Jurnal Akta*, 6(1).
- Maria Farida Indrati Soeprapto. (1998). *Ilmu Perundang-undangan: Dasar-dasar dan Pembentukannya* (Yogyakarta: Kanisius.
- Mukti, F. (2010). Dualism of Normative and Empirical Legal Research. Yogyakarta: Student Library.
- Sudikno, M. (2002). *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta
- Sukarmi, A. M., & Suwondo, D. (2022). Impact of Traffic Congestion on Economic Welfare of Semarang City Community. *Journal of Xidian University*, *16*(2), 2289-1560.
- Sulistyani, E. L. (2018). *Pancasila Dalam Konstruksi Sistem Hukum Nasional*, Jurnal Negara Hukum Dan Keadilan, 7(2).
- Teguh, P., & Ari, P. (2014). *Membangun Hukum Hukum Berdasar Pancasila* (Bandung: Nusamedia).
- Teguh, P. (2020). *Keadilan Bermartabat, Perspektif Teori Hukum* (Bandung: Nusamedia, 2015) Ralang Hartati, Syafrida. **"**Hambatan Dalam Eksekusi Perkara Perdata" Adil: Jurnal Hukum, 12(1).
- Yeltriana. (2019). Ideal Reconstruction of Protection For Layoff Victim At The Industrial Relations Court Based On Justice, *International Journal of Law, Government and Communication*, 4(14).