

## The Legal Hurdles in Executing Land Dispute Cases in Court

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### ABSTRACT

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The study aims to critically analyse the regulatory framework governing the execution of civil dispute cases in Indonesia and to evaluate the practical implementation of such executions within the jurisdiction of the Kuningan District Court. The study encompasses an empirical juridical method involving fieldwork that was conducted at the Kuningan District Court. The finding shows the execution of court decisions is governed by various legal provisions, such as Article 27(1) and Article 28D(1) of the 1945 Constitution of the Republic of Indonesia, Article 1365 of the Indonesian Civil Code, Article 196 of the Herzien Inlandsch Reglement (HIR) or Article 207 of the Rechtreglement voor de Buitengewesten (RBg), Article 66(2) of Law No. 3 of 2009 concerning the Second Amendment to Law No. 14 of 1985 on the Supreme Court, Articles 54(2), 54(3), and 55(1) of Law No. 48 of 2009 on Judicial Power, and Supreme Court Circular No. 1 of 2010 regarding Requests for Execution Assistance. Even though its execution process has some issues, the study finalises that the resolution of cases and the enforcement of court decisions are governed by relevant legal regulations. As the legal structures, legal substance, and legal culture put a heavy weight on it, the execution process of land dispute cases at the Kuningan District Court has not yet been optimally implemented. Accordingly, to prevent prolonged execution processes that could drain time, energy, and financial resources, the court is encouraged to adhere to the principle of legal certainty that has legal finality.



### Introduction

Humans are inherently social beings, continuously engaging in social interactions as they are unable to live off from the support of fellow individuals. The unity among humans, stemming from their shared nature and mutual interactions, known as society. Society is established when two or more individuals live in proximity, leading to the creation of diverse relationships that foster mutual recognition and influence. These interactions shape the social fabric, where individuals not only coexist but also impact each other's lives in various ways<sup>1</sup>. In social life, each individual has their own needs and interests, which at times may differ, or even contrast to the prevailing laws. These distinctions can lead to disputes and conflicts that disrupt the harmony of communal life<sup>2</sup>. Some disputes can be resolved peacefully while others can persistently cause tension and harm both parties. To ensure each party's interests are defended without exceeding the boundaries of established norms, acts of self-justice (*eigenrichting*) must be averted. If the parties involved are convinced their rights

<sup>1</sup> Muhamad A S Manoppo, Roy Ronny Lembong, and Berlian Manoppo, "Sanksi Pidana Atas Permutafakatan Jahat Untuk Melakukan Tindak Pidana Pencucian Uang Terhadap Orang Yang Berada Di Dalam Atau Di Luar Wilayah Negara Kesatuan Republik Indonesia," *Lex Privatum* 8, no. 5 (2022): 1-17.

<sup>2</sup> Atang Hermawan Usman, "Kesadaran Hukum Masyarakat Dan Pemerintah Sebagai Faktor Tegaknya Negara Hukum Di Indonesia," *Jurnal Wawasan Hukum* 30, no. 1 (2014): 26-53.

have been violated, they are entitled to pursue an effective and conclusive dispute resolution process they believed to address the matter.<sup>3</sup> In the enforcement of law in Indonesia, the judiciary represents the ultimate recourse for individuals seeking justice. If the disputing parties are unable to amicably resolve their disparities, they may bring the matter before the court. As stipulated in Law No. 49 of 2009, which amends Law No. 2 of 1986 on General Courts, the District Court is designated with the responsibility and authority to examine, adjudicate, and resolve both criminal and civil cases at the first instance level.<sup>4</sup>

The resolution of legal disputes within the judicial system is intricately linked to procedural law, which comprises a comprehensive body of binding regulations governing civil, criminal, and administrative matters. This body of law delineates the formal procedures for the conduct of proceedings in the courts. Civil procedural law, also referred to as formal civil law, represents a systematic framework of rules that regulate the litigation process within the judiciary. It encompasses the protocols for the conduct of the parties involved, the strategies employed by the defense, the discretionary actions of the judge in delivering impartial and just rulings, and the execution of judicial decisions to safeguard the integrity of legal principles and the equitable administration of justice.<sup>5</sup> First, it ensures legal certainty by affirming that every individual has the right to protect their civil rights to the fullest extent, and anyone who violates these rights at the expense of others may be subject to litigation. Second, civil procedural law serves the function of upholding, defending, and ensuring the enforcement of substantive legal provisions in practice, facilitated through judicial intervention.<sup>6</sup> Currently, the resolution of civil disputes in Indonesian courts still relies on provisions derived from the *Herzien Inlandsch Reglement* (HIR) and *Rechtreglement voor de Buitengewesten* (RBg). These legal frameworks were adopted based on the principle of concordance, as they are remnants of the colonial Dutch government's legal products that remain in effect today. HIR is often translated as the "Updated Indonesian Regulation," which refers to the procedural law governing civil cases in Java and Madura. Meanwhile, RBg, translated as the "Regulation for Outer Regions," is the procedural law applied to civil cases outside Java and Madura.<sup>7</sup>

The judicial outcomes resulting from the examination of civil cases in court are categorized into three types: decisions, decrees, and settlement deeds. A decision is a formal statement made by the judge, documented in writing and publicly announced in an open court session, serving as the result of the adjudication of a contentious lawsuit. (*kontensius*). A decree is also a formal statement by the judge, recorded in writing and pronounced in an open court session, but it pertains to the examination of a non-contentious petition (*voluntair*). Meanwhile, a settlement deed is a document that reflects the outcome of a mutual agreement between the parties involved in a dispute, intended to resolve the conflict, and holds the same legal effect as a judicial decision<sup>8</sup>. A judicial ruling in court that has attained the status of finality (*in kracht van gewijsde*) is not invariably executed

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<sup>3</sup> R. Rosita, "Alternatif Dalam Penyelesaian Sengketa (Litigasi Dan Non Litigasi)," *Al-Bayyinah: Journal of Islamic Law* 1, no. 2 (2017): 85-98.

<sup>4</sup> Melani A Yustianing et al., "Tinjauan Perlawanan Untuk Menunda Eksekusi Dalam Sengketa Perdata," *Jurnal Verstek* 2, no. 3 (2014): 142-151.

<sup>5</sup> Dwi Agustine, "Pembaharuan Sistem Hukum Acara Perdata," *RechtsVinding* 1, no. 1 (2017): 1-7.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, hlm. 2.

<sup>8</sup> Juwita Tarochi Boboy, Budi Santoso, and Irawati Irawati, "Penyelesaian Sengketa Pertanahan Melalui Mediasi Berdasarkan Teori Dean G.Pruitt Dan Jeffrey Z.Rubin," *Notarius* 13, no. 2 (2020): 803-818.

voluntarily by the losing party, thereby requiring the initiation of enforcement proceedings to ensure compliance.<sup>9</sup> Execution is the enforcement of a court decision that has acquired permanent legal force, carried out forcibly if the losing party refuses to comply voluntarily (*Vrijvilling Voluntary*)<sup>10</sup>. A judicial decision is primarily founded upon two key considerations: the evaluation of the facts presented during the trial and the application of legal reasoning. The facts presented in the courtroom that are considered by the judge must be further classified into two categories: legal facts and non-legal facts. Legal facts must be substantiated by at least two pieces of evidence and reinforced by the judge's conviction, whereas non-legal facts should be disregarded, as they do not bear relevance to the decision-making process. The second consideration involves the legal reasoning applied to the established legal facts, which are subsequently qualified as specific legal events before ultimately constituting the applicable law.<sup>11</sup> Judges are granted the freedom by law to employ methods of legal interpretation when the applicable law is absent or ambiguous, ensuring that there is no uncertainty in rendering decisions on the cases before them. This judicial discretion, as stipulated by law, obliges judges—who serve as enforcers of law and justice—to study, adhere to, and comprehend the legal values prevalent in society. In principle, the court is not permitted to refuse to examine and adjudicate a case on the grounds that the law is non-existent or unclear, as it bears the responsibility to examine and adjudicate the matter. This principle is grounded in the belief that the judiciary possesses the capacity to interpret and apply the law effectively.<sup>12</sup>

From the perspective of the legal objectives embedded in judicial decisions, at least three forms of execution can be identified: real execution, which involves compelling the losing party to perform a specific act, such as the delivery of property, the vacating of land or a house, demolition, cessation of a particular act, and other similar actions. Real execution is carried out directly through tangible actions, in accordance with the judgment, without the need for an auction. Monetary execution involves compelling the losing party to pay a specified sum of money. This is the opposite of real execution, where execution cannot be directly performed in accordance with the judgment without first undergoing an auction. In other words, execution in this context necessitates an auction due to the value of the item to be executed being in monetary terms. Lastly, execution to perform an act pertains to cases where the judgment obligates an individual to perform a certain act, and if the individual fails to do so within the time specified by the judge, the prevailing party may request the assistance of the head of the district court, either in written or oral forms, to assess the damages incurred if the judgment is not executed. If the request is made orally, it must be recorded by the court.<sup>13</sup>

Execution is a coercive action taken against the losing party in a case. Essentially, execution is the enforcement of the obligation of the concerned party to fulfill the

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<sup>9</sup> Warsito Kasim, "Analisis Hukum Pelaksanaan Eksekusi Dalam Perkara Perdata Yang Telah Berkekuatan Hukum Tetap," *Jurnal Perencanaan dan Pengembangan Ekonomi* 3, no. 1 (2020): 53.

<sup>10</sup> Adinda Maretsyah Purba and Fauziah Lubis, "Hambatan Dalam Pelaksanaan Putusan (Eksekusi) Perkara Perdata," *Jurnal Hukum dan Kebijakan Publik* 6, no. 3 (2024): 209–221.

<sup>11</sup> Marihot Janpieter Hutajulu, "Filsafat Hukum Dalam Putusan Pengadilan/Hakim," *Refleksi Hukum: Jurnal Ilmu Hukum* 9, no. 1 (2015): 91.

<sup>12</sup> F. S Retnowati, T., & Sari, "Perlawanan Terhadap Eksekusi Putusan Pengadilan," *E-Journal The Spirit of Law* 2, no. 2 (2019): 68–81.

<sup>13</sup> Dian Latifiani, "Permasalahan Pelaksanaan Putusan Hakim," *Jurnal Hukum Acara Perdata* 1, no. 1 (2015): 15–29.

performance as stipulated in the judgment.<sup>14</sup> Execution is carried out by the court against the losing party in a case, serving as a continuation of the regulations and procedures for implementing the outcome of the case's judgment.<sup>15</sup> Execution is carried out under the order and supervision of the Chief Judge of the District Court that rendered the judgment, and is executed by the Court Clerk or Bailiff. The costs of execution are borne by the party requesting the execution.<sup>16</sup> Execution is carried out to compel the losing party in a legal dispute to implement the content of the court's decision. This falls under the category of tangible execution, where the implementation of the decision requires concrete actions, such as the delivery of goods, the eviction of land or property, the performance of certain actions, or the cessation of specific actions. In this context, execution serves as a mechanism to ensure that the rights recognized by the court are granted to the entitled party in a manner consistent with the court's ruling.<sup>17</sup> The principles of execution law that must be considered are as follows: First, execution is carried out based on a court decision that has permanent legal force, in the event that the losing party refuses to voluntarily implement the decision, unless specified otherwise by law. Second, what can be executed is the judgment's ruling that is punitive (condemnatory) in nature, while rulings that are constitutive or declaratory do not require execution. Third, the execution is carried out under the order and leadership of the head of the relevant District Court, and is implemented by the court clerk and bailiff with the assistance of state authority where necessary.<sup>18</sup>

Real execution is a legal action that follows disputes over "ownership rights" or legal disputes based on agreements such as sale and purchase, lease agreements, or agreements to perform a specific act. Disputes outside of these contexts, however, generally do not fall under the classification that can be resolved through real execution.<sup>19</sup> In practice, an example of real execution is the enforcement of land eviction based on a court ruling, where the judge orders the defendant or the losing party to vacate the land in question. Real execution is straightforward and uncomplicated, the method and process being relatively simple. For instance, compelling the defendant or the losing party to leave the land. Theoretically, real execution does not require complicated formalities.<sup>20</sup> Nonetheless, the execution process frequently encounters uncountable hurdles especially during its implementation.

One example is Kuningan District Court case number 1490 K/Pdt/2022. The plaintiff won the case at the first-instance court. At the appellate level, the High Court ruled in favor of the defendant. Nevertheless, at the cassation level in the Supreme Court, the case was again decided in favor of the plaintiff, rendering the decision final and binding. Despite the matter, the decision was not voluntarily executed, prompting the filing of a forced execution request at the Kuningan District Court to return and hand over the disputed plot of land to

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<sup>14</sup> V. A. Arliana, M., Riyanti, M. D., & Novita, "Analisis Yuridis Terhadap Hasil Eksekusi Riil Yang Melebihi Batas Yang Di Eksekusi," *Lex Suprema* 4, no. 2 (2022): 196-212.

<sup>15</sup> Hazar Kusumayanti, "Penerapan Dan Permasalahan Eksekusi Pesawat Terbang Berdasarkan Hukum Acara Perdata Dalam Perjanjian Perawatan Mesin Pesawat," *Jurnal Bina Mulia Hukum* 1, no. 1 (2016): 26-35.

<sup>16</sup> Syafrida Ralang Hartati, "Hambatan Dalam Eksekusi Perkara Perdata," *Adil: Jurnal Hukum* 12, no. 1 (2021): 88-104.

<sup>17</sup> Yuni Priskila Ginting et al., "Sosialisasi Terkait Hasil Eksekusi Riil Yang Melebihi Batas Eksekusi Terkait Sengketa Tanah," *Jurnal Pengabdian West Science* 02, no. 10 (2023): 905-915.

<sup>18</sup> Novreddy Sihombing, "Kekuatan Hukum Putusan Badan Penyelesaian Sengketa Konsumen," *Jurnal Online Mahasiswa Fakultas Hukum Universitas Riau* 2, no. 1 (2015): 1-12.

<sup>19</sup> Muhammad Fadhillah, "Tinjauan Hukum Pelaksanaan Eksekusi Riil Dalam Putusan Peradilan Perdata," *Journal of Law (Jurnal Ilmu Hukum)* 7, no. 1 (2021): 875-888.

<sup>20</sup> *Ibid*, hlm. 5.

the plaintiff. The execution process has proceeded up to the seizure of an asset. However, the third party filed an extraordinary legal remedy, a Judicial Review (Peninjauan Kembali, PK), which led to the suspension of the execution process, pending the outcome of the Judicial Review decision. In fact, a request for Judicial Review does not, by its nature, suspend or delay the implementation of civil execution, as stipulated in Article 66 Paragraph (2) of Law Number 3 of 2009 on the Second Amendment to Law Number 14 of 1985 on the Supreme Court, which states, "A request for a judicial review does not suspend or halt the execution of a court decision." After the Judicial Review process was completed, the execution was again postponed due to an objection to the execution filed by the third party. Additionally, this is also evident in case Number 1/Pdt.EksHT/2022/PN.Kng, and case Number 1/Pdt.Eks/2023/PN.Kng. According to M. Yahya Harahap, the objection of a third party (*derden verzet*) should not be applied generally to delay execution, but must be assessed on a case-by-case basis and is of an exceptional nature<sup>21</sup>. Therefore, not every *derden verzet* can be used as a reason to delay execution; however, in certain cases, it may be justified. In fact, Article 195 paragraph (6) of the HIR does not mention the possibility of *derden verzet* delaying execution, but it also does not prohibit the suspension of execution on the grounds of *derden verzet* on a case-by-case basis. Accordingly, the study examines the following issues: How is the regulation on the Execution of Land Dispute Civil Cases in Indonesia? What are the Challenges in Executing Land Dispute Civil Cases at the Kuningan District Court?

## Research Methods

This is a descriptive-analytical study, describing data from observations, interviews, and field documents, which are then analyzed and presented in the form of research to outline the examined issues. The study employed an empirical juridical approach to describe the real conditions observed. The setting of the study was conducted in Kuningan Regency. The study encompassed primary and secondary data where the former was obtained from observations and direct interviews while the latter was obtained from official documents, books, and even research results. The legal materials used include primary legal materials from regulations and laws, as well as secondary legal materials from legal documents such as books, literature, scientific journals, theses, and other written legal materials related to the issues.

## Results and Discussion

### 1. Regulation on the Execution of Land Dispute Civil Cases in Indonesia

The concept of the rule of law clearly emphasizes the importance of law enforcement in Indonesia. For example, the 1945 Constitution of the Republic of Indonesia, as the foundation of the state, must serve as a guide in all activities of national life, including the resolution of disputes and everything contained within it. In this regard, Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states, "All citizens are equal before the law and government and are obliged to uphold the law and government without exception." In addition, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states, "Everyone is entitled to recognition, guarantees, protection, and legal certainty that is just, as well as equal treatment before the law." This further emphasizes the implementation of Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, reinforcing

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<sup>21</sup> Sonyendah Retnaningsih et al., "Pertimbangan Hukum Dalam Perkara Bantahan (Derden Verzet) Atas Sengketa Tanah Menurut Surat Edaran Mahkamah Agung Nomor 3 Tahun 2018," *Jurnal Yuridis* 11, no. 1 (2024): 78–97.

the principle of equality before the law and the assurance of fair legal protection for all citizens<sup>22</sup>. According to Ramly Hutabarat, the meaning of equality before the law is defined in almost every country's constitution. If this principle is stated in the 1945 Constitution of the Republic of Indonesia, then the logical consequence is the authorities and law enforcement officials must implement and realize this principle in the life of the state, ensuring that it functions in accordance with its respective roles. Equality before the law means that all citizens must be treated fairly by law enforcement and the government.<sup>23</sup> The idea of equality before the law states that the law must apply equally to all citizens: simply put, no one is above the law. This concept is also one of the meanings of the term "rule of law," which serves as the foundation of many constitutions today and is widely regarded as a central principle of a just legal system.<sup>24</sup> Equality Before the Law is a very universal and textual. In summary, equality before the law has become a legal and administrative principle that requires the existence and application of the law to all individuals. From a textual perspective, equality before the law is stated in legal documents, and the law underpinning it affirms that the law applies to all individuals who are subject to it. From a legal standpoint, conversely, laws do not allow any benefits to be granted to certain parties without legitimate reasons. Any exception to this principle would amount to betraying the concept of law itself.<sup>25</sup>

In the Civil Code, there are two types of cases whose resolution process is lengthy and can even be prolonged, the breach of contract (*wanprestasi*) and the tort (Act against the law). First, breach of contract is a case based on an agreement process. In Article 1313 of the Civil Code, it is explained that "An agreement is an act where one or more persons bind themselves to one or more other persons," which contains conditions that must be fulfilled as outlined in Article 1320 of the Civil Code. It states, "In order for a valid agreement to occur, four conditions must be met, including: mutual consent of the parties, the capacity to enter into an obligation, a specific subject matter, and a lawful cause." Due to the principle of freedom of contract, everyone is free to make agreement, which is outlined in Article 1338 of the Civil Code, stating, "All agreements made in accordance with the law shall be binding as law for those who make them. Such agreements cannot be revoked except by mutual consent of both parties, or for reasons determined by law, and the agreement must be executed in good faith." If there is a violation of any terms by one party, it falls under the category of breach of contract (*wanprestasi*), which is regulated in Article 1243 of the Civil Code, stating, "Compensation for costs, damages, and interest due to the non-fulfillment of an obligation becomes mandatory when the debtor, even after being declared negligent, continues to neglect fulfilling the obligation, or if something that is to be given or done can only be provided or done after the time limit has passed." Second, a tort (*perbuatan melawan hukum*) refers to actions that violate the law or act in contradiction to the rights of others and result in harm. This is regulated in Article 1365 of the Civil Code, which states, "Every act that

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<sup>22</sup> Dikha Anugrah et al., "Regulation of Physical Data on Land Destroyed by Natural Disasters," *UNIFIKASI: Jurnal Ilmu Hukum* 10, no. 2 (2023): 124-135.

<sup>23</sup> Ika Fitriana, "Perlindungan Terhadap Hak-Hak Kelompok Minoritas Di Indonesia Dalam Mewujudkan Equality Before the Law," *Al Yasini: Jurnal Keislaman, Sosial, Hukum dan Pendidikan* 6, no. 2 (2021): 232-238.

<sup>24</sup> Daron Acemoglu and Alexander Wolitzky, "A Theory of Equality Before the Law," *The Economic Journal* 131, no. 636 (2021): 1429-1465.

<sup>25</sup> Lelly Muridi et al., "Application of the Principle of Equality Before the Law in Justice Practices in Indonesia Keberlakuan Asas Equality Before the Law Pada Praktik Peradilan Di Indonesia," *Jurnal Lawnesia* 2, no. 1 (2023): 260-271.

violates the law and causes harm to another person obliges the person who caused the harm, due to their fault, to compensate for the loss."

As a follow-up to the Civil Code, which contains substantive civil law, there is also formal civil law or civil procedural law, which regulates how the civil case proceedings in court take place until a verdict is issued by the judge or court. Not only that, formal civil law or civil procedural law also regulates how the court's decision is enforced by the parties involved in the dispute. Even when the losing party in a case refuses to voluntarily comply with the court's decision, this civil procedural law stipulates that the court must assist if the prevailing party requests assistance to enforce the judgment by submitting a request to the Chief Judge of the District Court that rendered the decision. In Indonesia, the *Herzien Inlandsch Reglement* (HIR) applies in the regions of Java and Madura. Meanwhile, the *Rechtreglement voor de Buitengewesten* (RBg) applies outside Java and Madura. Both are legal legacies from the Dutch colonial era that are still used up to day. These regulations explain: Article 118 paragraph (1) of the *Herzien Inlandsch Reglement* (HIR) or Article 142 paragraph (1) of the *Rechtreglement voor de Buitengewesten* (RBg) states that "A civil lawsuit at the first instance, which falls under the jurisdiction of the District Court, must be submitted in writing, signed by the plaintiff or their representative, to the chairperson of the District Court in the jurisdiction where the defendant resides, or if the defendant's residence is unknown, their actual place of residence." According to this article, the preliminary hearing in a civil case at the District Court involves the creation of a petition that must be signed by the plaintiffs or their representative. Although this article does not specify any provisions regarding the form and content of the petition, it generally includes the names and addresses of both parties involved in the dispute (the plaintiff and the defendant), the subject of the lawsuit, and the basis for the trial. Furthermore, Article 120 of the *Herzien Inlandsch Reglement* (HIR) or Article 144 of the *Rechtreglement voor de Buitengewesten* (RBg) states: "If the plaintiff is illiterate, the lawsuit may be submitted orally to the head of the district court, who will record it or instruct someone to record it." This article is very useful and beneficial for those seeking justice who have limited knowledge and are unable to prepare and write a lawsuit petition themselves.

Meanwhile, Article 196 of the *Herzien Inlandsch Reglement* (HIR) or Article 207 of the *Rechtreglement voor de Buitengewesten* (RBg) states: "If the losing party refuses or fails to comply with the content of the judgment peacefully, the winning party may submit a request, either orally or in writing, to the head of the district court. To enforce the decision, the chairperson will instruct the losing party to be summoned and warned to comply with the decision within the time frame set by the chairperson, which shall not exceed eight days." The content states, when the losing party neglects or refuses to comply with the judgment, the winning party may request assistance, either orally or in writing, from the court that issued the decision to enforce the judgment. The court chairman will summon the losing party and warn them to comply with the decision within a time frame, which must not exceed eight days. The Supreme Court is a high state institution as referred to in the People's Consultative Assembly Decree of the Republic of Indonesia Number III/MPR/1978. The Supreme Court is also the highest court in the entire judicial environment, and in carrying out its duties, it is free from the influence of the government and other external influences. This is stated in Article 1 and Article 2 of the Law on the Supreme Court.

In its implementation, the Supreme Court must supervise all judicial bodies under in accordance with Article 32 paragraphs (1), (2), (3), (4), and (5), which state:

- a. The Supreme Court exerts ultimate oversight over the judiciary's operations within all judicial bodies under its authority in the administration of judicial power;
- b. In addition to the oversight referred to in paragraph (1), the Supreme Court exercises ultimate supervision over the execution of administrative and financial duties;
- c. The Supreme Court holds the authority to request information pertaining to judicial technicalities from all subordinate judicial bodies;
- d. The Supreme Court is authorized to provide directives, reprimands, or warnings to courts within all subordinate judicial bodies;
- e. The oversight and authority referred to in paragraphs (1), (2), (3), and (4) must not undermine the independence of judges in examining and adjudicating cases;

With regard to a final and binding decision that becomes subject to a judicial review, the enforcement of the decision may proceed as usual since Article 66 paragraph (2) states, "*A request for judicial review does not suspend or halt the execution of the Court's decision.*" It happens because a decision that has obtained final and binding legal force must be promptly executed in accordance with its ruling. A decision is deemed to have final legal force when the ordinary legal remedies have been exhausted, including the cassation process. Meanwhile, a judicial review is classified as an extraordinary legal remedy that does not suspend the enforcement or execution of a court decision. In exercising its authority, the police must uphold the principles of applicable law and ensure that acts of assault and mob violence are met with appropriate legal sanctions. The police must also guarantee that victims of criminal acts receive adequate protection and assistance while restoring public safety and order disrupted by such incidents. In exercising its authority, the police must adhere to Article 19 of Law No. 2 of 2002 on the Indonesian National Police, which stipulates that in carrying out their duties and powers, officials of the Indonesian National Police must always act in accordance with legal norms and respect religious norms, decency, morality, uphold human rights, and prioritize preventive actions.

According to the concept of the rule of law and the Indonesian constitutional system, the judiciary is an independent institution under the Supreme Court, tasked with administering justice to uphold law and justice. As stated in Article 1 paragraph (1) of Law No. 48 of 2009 on Judicial Power, "*Judicial power is an independent state power to carry out justice in order to enforce law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the realization of the Rule of Law of the Republic of Indonesia.*" The administration of judicial power is also based on several principles as stated in Article 2, paragraphs (1), (2), (3), and (4), which are as follows:

- a. The judiciary is carried out "*For Justice Based On The Almighty God*" (original saying: *Keadilan Berdasarkan Ketuhanan Yang Maha Esa*);
- b. The state judiciary applies and enforces law and justice based on Pancasila;
- c. All courts throughout the territory of the Republic of Indonesia are state courts regulated by law;
- d. The judiciary is carried out in a simple, prompt, and cost-effective manner;

The meaning of the provision in paragraph (1), which states the judiciary is carried out "*For Justice Based On The Almighty God*," aligns with Article 29 of the 1945 Constitution of the Republic of Indonesia. This article stipulates that the state is based on the belief in the



Almighty God and guarantees the freedom of every citizen to embrace their religion and to worship according to their religion and beliefs. Meanwhile, the meaning of the provision in paragraph (4), where "simple" refers to the examination and resolution of cases are conducted efficiently and effectively. "Affordable costs", on the other hand, refers to case expenses accessible to the public. However, the principles of simplicity, speed, and affordability in court do not disregard the importance of thoroughness and accuracy in seeking truth and justice. Furthermore, the implementation of Court Decisions, civil cases is regulated in Article 54 paragraph (2), which states, "The implementation of court decisions in civil cases is carried out by the clerk and bailiff, led by the head of the court." In practice, it cannot be carried out arbitrarily, as Article 54 paragraph (3) also stipulates, "The court decision must be implemented with consideration of human values and justice." Additionally, the implementation must always be under the supervision of the "Head of the Court," as outlined in Article 55 paragraph (1), which explains that the head of the court is obligated to oversee the execution of court decisions that have obtained final legal force.

The Supreme Court Circular Number 1 of 2010 concerning Execution Assistance can be legally grounded in Article 79 of Law No. 14 of 1985 on the Supreme Court. In Article 79 of Law No. 14 of 1985, the law grants the Supreme Court the authority to establish legal provisions or rule-making power. This authority is granted to the Supreme Court to resolve issues that are not specifically regulated in the existing laws and regulations. However, not all Supreme Court Circulars (SEMA) can be categorized as exercising rule-making power. Only Supreme Court Circulars (SEMA) that regulate procedural law and fill legal gaps, referring to the provisions of Article 8 of Law No. 12 of 2011 on the formation of legislation, are considered to exercise rule-making power. SEMA based on Article 79 of Law No. 14 of 1985 on the Supreme Court holds binding legal force and can be classified as legislation. One example is SEMA No. 01 of 2010 concerning Execution Assistance, which contains the following: To ensure synchronization between the outcomes of the 2009 National Working Meeting in Palembang and the guidelines outlined in Book II, 2007 Edition, published in 2009 regarding requests for assistance in the execution of civil case decisions—commonly referred to as delegation—as regulated under Article 195 paragraphs (2) to (7) of the HIR or Article 206 paragraphs (2) to (7) of the RBg, the Supreme Court deems it necessary to provide the following instructions:

1. In cases where the execution of a District Court decision is requested to be assisted by another District Court outside its jurisdiction where the disputed object is located, the request must be formalized in a Decree issued by the Chief Judge of the requesting District Court. Subsequently, the Chief Judge of the District Court providing the assistance must issue a Decree containing an order to the Clerk or Bailiff to carry out the execution under the instruction and supervision of the Chief Judge of the assisting District Court.
2. Should the execution referenced in point 1 be contested, either by the judgment debtor or a third party, the objection must be filed, reviewed, and resolved by the District Court providing the assistance, in accordance with Article 195 paragraph (6) of the HIR or Article 206 paragraph (6) of the RBg.
3. If the opponent in their objection requests the suspension of the execution as mentioned in point 2 above, the authority to approve or reject such suspension rests with the Chief Judge of the assisting District Court, acting as the official in charge of the execution.

However, it is mandatory for the Chief Judge to submit a detailed written report within 2 x 24 hours to the Chief Judge of the requesting District Court, outlining all actions taken, including the decision to suspend the execution (as stipulated in Article 195 paragraphs (5) and (7) of the HIR or Article 206 paragraphs (5) and (7) of the RBg).

4. The Chief Judge of the assisting District Court is responsible for implementing the execution, as described in Articles 195 (3) and (4) of the HIR and Article 206 (4) and (6) of the RBg. This includes reporting to the requesting District Court on the progress of the execution without requiring any further involvement from the requesting Chief Judge. This framework ensures clarity and delineation of authority between the assisting and requesting courts.
5. Execution of decisions as mentioned in points 1 to 4 above applies *mutatis mutandis* to courts within the religious court system, unless specifically regulated otherwise in Law No. 7 of 1989 in conjunction with Law No. 3 of 2006 and Law No. 50 of 2009 on Religious Courts.

The analysis of the execution regulation in civil dispute cases through Gustav Radbruch's theory of legal certainty is that legal certainty refers to certainty about the law itself. First, the law must be positive. Second, the law is based on facts. Third, the facts must be clearly formulated. Fourth, positive law should not be frequently altered. It explains that legal certainty regarding the process, filing a case to the court to its execution, is regulated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia regarding equality before the law. It is further explained in Article 1365 of the Civil Code about the definition and characteristics of unlawful acts, and in Article 196 of the *Herzien Inlandsch Reglement* (HIR) or Article 207 of the *Rechtreglement voor de Buitengewesten* (RBg), which states that if the losing party refuses to voluntarily execute the decision, they can request an execution from the competent District Court. Additionally, during the trial process for case resolution, each District Court is supervised by the Supreme Court, as stated in Articles 32 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) of Law No. 3 of 2009 concerning the Second Amendment to Law No. 14 of 1985 on the Supreme Court. The Supreme Court is tasked with overseeing the administration of justice in all judicial bodies under it, including the results of judges' decisions, as well as matters related to administration and finance. Each judge, in performing their duties, is guided by several principles mentioned in Article 2, paragraphs (1), (2), (3), and (4) of Law No. 48 of 2009 concerning Judicial Power. If there is an error, the Supreme Court has the authority to provide guidance, warnings, or reprimands to all judicial bodies. However, it is prohibited from intervening or reducing the authority of judges in examining and deciding cases.

It underscores that the resolution of a case must be based on laws in the form of regulations, supported by clear and accurate facts gathered during the trial. Thus, a case should be decided in accordance with the applicable legal provisions. The presence of legal certainty helps the public feel more confident and assured when seeking to defend their rights through the judicial system, as they believe that justice will be served. When an execution involves an object outside the jurisdiction of the court handling the case, the court will request execution assistance from the court within the jurisdiction where the object is located, as outlined in the Supreme Court Circular No. 1 of 2010 regarding Requests for

Execution Assistance. Therefore, based on these regulations, legal certainty is present at each stage of the execution process.

## **2. Hurdles in the Execution of Civil Land Dispute Cases at the Kuningan District Court**

The execution of civil case at the Kuningan District Court serves as the final step in enforcing court rulings. If a party loses and fails or refuses to comply with the judgment, the winning party can request the assistance of the Kuningan District Court to carry out the decision, in accordance with Article 196 of the HIR or Article 207 of the RBg. One example that occurred at the Kuningan District Court is in case number 1490 K/Pdt/2022, where the plaintiff won the case at the first-instance court. However, at the appellate level, the High Court ruled in favor of the defendant. At the cassation level, the Supreme Court ruled again in favor of the plaintiff, making the decision final and binding. However, since the decision was not voluntarily executed, a request for forced execution was filed with the Kuningan District Court to return and hand over the disputed land to the plaintiff. The execution process has progressed to property seizure. Nevertheless, the third party pursued an extraordinary legal remedy, namely a judicial review (PK), which led to the suspension of the execution process. While awaiting the result of the PK decision, it is important to note that, by law, a request for a judicial review does not automatically delay or suspend the execution of a civil judgment. It is in line with Article 66, Paragraph (2) of Law No. 3 of 2009 concerning the Second Amendment to Law No. 14 of 1985 on the Supreme Court, which clearly states, "A request for judicial review does not delay or stop the enforcement of a court decision." Between 2020 and 2023, several execution cases remained unresolved.

Table . 1

The data on civil cases that proceed to the execution process at the Kuningan District Court

No	Execution Register Number	Date of Execution Request Registration	Reasons for Non-Execution Judgment	Description
1.	2/Pdt.Eks/2023/PN.Kng	August 8, 2023	Temporarily suspended due to a request for judicial review (PK), and after the judicial review process is completed, there was an objection filed against the execution process.	Execution implementation phase
2.	1/Pdt.EksHT/2022/PN.Kng	4 February 4, 2022	The unpreparedness of the security personnel for the execution, as per the letter from the Police dated June 14, 2023.	The coordination meeting phase for the execution process.
3.	1/Pdt.EksHT/2023/PN.Kng	March 10, 2023	The unpreparedness of the security personnel for the execution process, as stated in the letter from the Police dated August 25, 2023, due to the upcoming 2024 General Elections.	Execution of the enforcement

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4.	1/Pdt.EksHT/2024/PN.Kng	January 8, 2024 -	It has been voluntarily implemented on January 26, 2024.
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Source : The Civil Registrar of the Kuningan District Court.

Accordingly, the authors conducted an interview with the relevant institutions regarding the execution of civil land dispute cases in Kuningan Regency, with the resource persons being Mr. Adhika Bhatara Syahrial, who serves as a Judge at the Kuningan District Court, and Mr. Iman Saediman, who serves as the Head of the Civil Registrar at the Kuningan District Court. According to Mr. Adhika Bhatara Syahrial, the execution request for civil dispute cases is governed by the *Herzien Inlandsch Reglement (HIR)* or *Rechtreglement voor de Buitengewesten (RBg)*, and the *Wetboek op de Burgerlijke Rechtvordering (Rv)* can be used to fill in legal gaps when certain matters are not addressed in the HIR and RBg. The execution could not be carried out in this case due to circumstances requiring the Court to delay or postpone the process. For example, in the first case, there was an objection from a third party who filed for a judicial review, prompting the Chair of the Kuningan District Court to suspend the execution process as a precautionary measure and await the outcome of the judicial review decision.

The case is supported by the statement from Mr. Iman Saediman, who mentioned that after the judicial review process was completed, the execution proceeded to the stage of constatering or verifying the boundaries of the disputed land. However, when the execution was about to be carried out, there was an objection to the execution process from the opposing party. As a result, the Chair of the Kuningan District Court decided to postpone the execution once again until the the objection was concluded and became legally binding. In the second and third cases, the execution was delayed due to the lack of preparedness from the security forces, with one of the reasons is the upcoming 2024 General Election. According to Mr. Adhika Bhatara Syahrial, the execution of civil disputes at the Kuningan District Court is carried out in line with the procedures outlined in the applicable laws and regulations, as well as the guidelines from the Supreme Court. The process includes receiving the execution request, reviewing the execution, issuing a warning (*aanmaning*), and carrying out the execution itself. Nevertheless, during the execution of each case, the situation and conditions are always different. Overall, the obstacles in the execution process are due to opposition, both physical and non-physical. In the case of physical opposition, it is closely related to security concerns, and the execution may not be carried out for safety reasons. On the other hand, non-physical opposition typically occurs when a third party challenges the execution through legal action at a later stage.

According to Mr. Adhika Bhatara Syahrial, the court can only take measures to ensure the execution process is carried out during the incidental hearing for *aanmaning* (warning), where the court will try its best to resolve the matter peacefully. The incidental hearing can take place either in the courtroom or outside of it. In the Kuningan District Court, this is typically done through mediation to encourage voluntary compliance. However, if no resolution is reached during the *aanmaning* process, the next step will be to proceed with forced execution. Whether or not the forced execution can be carried out depends largely on

the readiness of the security forces, particularly the police. If the security forces declare their unpreparedness, the execution process will be delayed.

Therefore, the author also conducted an interview with Mr. Muhamad Triyono from the Kuningan Police to seek the reasons for the unpreparedness. According to him, the police will assess and observe the response of the party and the situation around the execution site. Based on the assessment, they will provide legal considerations on the potential outcomes if the execution is carried out. If the District Court decides to proceed with the execution, the police will provide security assistance by deploying a larger number of personnel for instance. The case related to the General Election, the police provided legal considerations that the prevailing legal culture in society could potentially lead to public unrest, which could later be linked to the General Election process. The precaution was taken to ensure the smooth conduct of the election. Once the election process is completed, the police will be ready to provide security for the execution. In other words, the term "legal culture" refers to the attitudes or mindsets of the community and the system of values present in society, which determine how the law should be applied within that community. Meanwhile, in relation to the research findings, legal culture refers to the attitudes or mindsets of society, where not all members of the community fully understand the law or the process of investigation and prosecution in cases of assault and battery, whether it involves suspects or victims. The enforcement of the law in assault and battery cases, has not met expectations, as many occur in the Kuningan Regency. A hard societal culture, a tendency to be easily offended, and a lack of socialization from law enforcement and related agencies become contributing factors. Law enforcement officials and relevant agencies, such as village supervisory officers (Babinsa) and the Civil Service Police Unit (SATPOL PP), should conduct socialization efforts to educate the public about crime and criminal acts.

An analysis of the implementation of execution for civil dispute cases in the Kuningan District Court, based on Lawrence M. Friedman's legal system theory, identifies the components influencing its execution as follows:

1. **Legal Structure:** The procedure for executing civil dispute cases at the Kuningan District Court involves various institutions that fundamentally influence the execution process. These institutions include the National Land Agency (BPN), the Police, and the Office of State Assets and Auction Services (KPKNL) if the execution requires an auction process beforehand. The most crucial role lies with the security forces, particularly the Police, as the District Court heavily depends on their availability to provide security during the execution process.
2. **Legal Substance:** The execution of civil dispute cases is regulated under Article 196 of the *Herzien Inlandsch Reglement (HIR)* or Article 207 of the *Rechtreglement voor de Buitengewesten (RBg)*, which states: "If the defeated party refuses or neglects to fulfill the court's ruling voluntarily, the winning party may request the chairman of the district court to enforce the court's decision." Regarding the execution process following a request submitted to the chairman of the district court, Article 66 paragraph (2) of the Law on the Supreme Court specifies that: "A request for judicial review does not suspend or halt the enforcement of a court ruling." However, discrepancies arise when compared to the guidelines outlined in the *Execution Guidelines for District Courts*, published by the Directorate General of the General Judiciary of the Supreme Court of the Republic of Indonesia in 2019, which state:

- 1) Execution can only be postponed by the Chair of the District Court, who oversees the execution process. In urgent situations where the Chair is unavailable, the Deputy Chair of the District Court may order the postponement of execution, for example, in cases of physical attacks on execution officers.
- 2) The postponement of execution is case-specific and exceptional.
- 3) The Postponement for humanitarian reasons
  - a. Postponement of execution is temporary and limited to a certain period or specific conditions. For example, if the postponement is due to an objection from a party or a third party, the postponement will last until the objection case is decided at the first level. If the objection is rejected, the execution will continue. However, if the objection is upheld, the execution must wait until a final and binding decision is made.
  - b. If the specified postponement period is exceeded, the execution must be carried out without the need for further *aanmaning*.
- 4) The postponement of execution is documented in the decree of the Head of the District Court.

The regulation has two key substances: it cannot be postponed despite a legal review, and it can be postponed based on the authority held by the Head of the District Court. In this case, the Head of the Kuningan District Court exercised his authority by prioritizing the principle of caution in carrying out the execution process, resulting in a postponement until the outcome of the Judicial Review decision obtained.

3. Legal Culture: The execution in civil dispute cases at the Kuningan District Court faces several obstacles due to resistance from the losing party, physically and non-physically. Physical resistance is closely related to security issues and sometimes involves the local community in collective opposition, preventing the execution process from being carried out. Meanwhile, non-physical resistance is usually presented by the opposing party through legal efforts at subsequent stages.

Therefore, the components of the legal system significantly influence the execution in civil dispute cases at the Kuningan District Court. Out of the four cases that proceeded to the execution stage, only one could be carried out voluntarily, specifically case number 1/Pdt.EksHT/2024/PN.Kng, while the remaining three cases were postponed. First, case number 2/Pdt.Eks/2023/PN.Kng was initially delayed due to a request for a Judicial Review from a third party. The Head of the Kuningan District Court decided to suspend the execution process based on the principle of caution. If the execution was carried out immediately while the Judicial Review process was ongoing, there was concern that the outcome of the review might favor the losing party. It would require the recovery of the object of the case after execution. Once the Judicial Review process was completed, the execution should have proceeded without issue. However, in reality, there was an opposition lawsuit against the execution process from a third party, and the Head of the Kuningan District Court issued another ruling to postpone the execution until the lawsuit was decided. Even though according to the execution guidelines, if the Judicial Review or the opposition lawsuit favored the party resisting the execution, the execution could be restored. Failure to carry out the execution promptly leads to the emergence of various resistance efforts, which hinder the execution process. While these efforts are legal, they cause the enforcement of the ruling to become prolonged, and no one is held accountable for this situation. Second, case

number 1/Pdt.EksHT/2022/PN.Kng, the execution was postponed due to the unpreparedness of the security forces for the execution, as stated in the letter from the Police dated June 14, 2023. Third, in case number 1/Pdt.EksHT/2023/PN.Kng, the execution was postponed due to the unpreparedness of the security forces in light of the upcoming 2024 General Election, according to the letter from the Police dated August 25, 2023.

Hence, the legal structure is a component that encompasses the roles of various institutions involved in the execution process. The substance of the law is a component that contains all the regulations regarding the execution, while the legal culture is a component that reflects the response to the implementation of law in society. The most prominent component of execution of civil dispute cases at the Kuningan District Court is the legal structure, where the Court and the security forces play a crucial role in ensuring the execution process is carried out. Therefore, the Court and the security forces must always coordinate well to address the legal culture in society. Thus, the execution process can proceed smoothly.

### **Conclusion**

In conclusion, in Indonesia, the execution of civil dispute cases is governed by various laws and regulations, such as Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 1365 of the Civil Code, Article 196 of the *Herzien Inlandsch Reglement* (HIR) or Article 207 of the *Rechtreglement voor de Buitengewesten* (RBg), Article 66 paragraph (2) of Law No. 3 of 2009 on the Second Amendment to Law No. 14 of 1985 on the Supreme Court, Articles 54 paragraph (2), Article 54 paragraph (3), and Article 55 paragraph (1) of Law No. 48 of 2009 on Judicial Power, and the Supreme Court Circular No. 1 of 2010 on Requests for Execution Assistance. Since it is entirely under the jurisdiction of the Supreme Court, the procedures are outlined in the Execution Guidelines for District Courts, created by the Directorate General of the General Court of the Supreme Court of the Republic of Indonesia in 2019. Therefore, the execution order is issued by the Head of the District Court in the form of a decree. The execution process is directly led by the Head of the District Court and carried out by the Registrar, Bailiff, or Substitute Bailiff. The execution for civil dispute cases at the District Court of Kuningan has not been optimally carried out. It is evident from one out of four cases to be successfully executed. The other three cases were postponed due to heavy influenced by legal system, legal structure, legal substance, and legal culture. Each case presents unique circumstances and conditions that lead to physical and non-physical obstacles. Therefore, the Head of the District Court considers the execution process on a case-by-case basis by exercising caution.

### **Suggestion**

Referring to the aforementioned description, it is expected that in the future, there will be regulations that ensure legal certainty between the laws and their implementing regulations. This way, after legal certainty is established from the court's decision, legal certainty for the prevailing party will also be guaranteed. It is important for the public, especially the parties involved in the dispute, to understand and accept the court's decision. This understanding is crucial for the smooth execution process and can facilitate coordination among related institutions in addressing the legal culture within society.

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