

## THE APPLICATIONS OF DECLARATION DECISIONS ON CIVIL PROCEDURE LAW IN INDONESIA

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### Abstract

Declaratory judgment is one of the decisions that can be given by the court to confirm a pre-existing legal right or situation, and not to provide new recognition or ratification. Declaratory decisions do not require execution because the decision explains the existing situation or the actual situation. The Civil Procedure Law has not fully addressed the problems related to execution that have become complaints from the public, especially regarding the governance and execution procedures that can produce an effective and efficient process. Some of the problems that will be analyzed are whether a declaration decision can be requested for execution and find out the time limit for requesting execution of the declaration decision. Furthermore, the study will explore the broader implications of these legal gaps, such as how they contribute to delays in the resolution of disputes and the challenges faced by parties seeking justice. This lack of clear regulation significantly hinders the smooth enforcement of the judicial process and contributes to unresolved legal disputes. Juridical-normative research results in finding a legal vacuum in the regulation of execution of civil procedural law in Indonesia. In this case, it's the declaration decision that does not need to be requested for execution, if you want to execute it, you need to file a new lawsuit. However, it should be noted that there is no provision that regulates the period of time when the decision must be executed by the losing party or the time limit for the execution of the execution decision.

**Keywords:** Civil Procedure Law, Declarator, Execution, Judgment, Time Limit

## INTRODUCTION

In Indonesia, resolving civil disputes through courts is common among communities. Court decisions play a crucial role in this process as they carry legal binding force for the parties involved. However, challenges persist in implementing court decisions. Parties may not comply due to misunderstandings, external factors, or reluctance.

A final decision concludes a legal dispute at the judicial level. In civil procedural law, final decisions can be condemnatory (punishing), constitutive (creating or negating legal situations), or declaratory (explaining legal rights or situations). This research focuses on declaratory decisions, which clarify existing legal rights or situations without imposing new obligations. Such decisions aim to provide clarity and legal certainty in civil disputes and agreements.

Considering that a declaratory decision does not need execution because the decision explains the existing situation or the actual situation. Declaratory verdicts are not unenforceable but do not need to be executed unless a new lawsuit is filed or there is a change in the verdict by remembering that in essence condemnatory and constitutive verdicts are also declaratory in nature as also contained in the Stipulation of the District Court. Surabaya No. 415/Pdt.P/2006/PN.Sby. In addition, the Civil Procedure Law has not fully addressed the problems related to execution that have become complaints from the public, especially related to governance and execution procedures that can produce an effective and efficient process. Based on the explanation given above, several problems that will be analyzed in this writing can be formulated as follows: 1. Can a declaratory judgment be requested for execution? 2. Is there a time limit for requesting execution of a declaratory judgment? The two objectives to be achieved in this writing are to find out that the declarator's decision cannot be requested for execution and to find out that the time limit for requesting execution of the declaration decision is not regulated in Indonesian civil procedural law.

## RESEARCH METHOD

Legal research is an attempt to find correct and valid answers to legal problems. In order for answers to legal problems to be found, accurate and reliable research results are needed (Ali, 2011). The research method used by the author is juridical-normative research, which focuses on analyzing the application of positive legal rules and norms contained in laws and regulations, as well as studying regulations and literature sources that form theoretical concepts related to the issues to be discussed. The author will use 3 (three) types of approaches, namely the statutory approach, conceptual approach and historical approach. Legal sources are used as a basis for directing research. Primary legal materials are in the form of applicable laws and regulations. Secondary legal materials are sources of publications related to legal documents in Indonesia. Non-legal materials in research to strengthen arguments on legal issues. The researcher collects relevant legal materials with library research methods. To analyze legal materials deductive analysis used by paying attention to the problem in general to achieve the real purpose.

## RESULTS AND DISCUSSION

### Execution on Declarator's Decisions

After Indonesia became independent, the government established laws that declare Indonesia as a sovereign nation responsible for maintaining a judicial system to uphold law and justice based on Pancasila values. This system is outlined in Law Number 4 of 2004 on Judicial Authority. The Supreme Court and its subordinate courts, along with the Constitutional Court, administer this authority. Civil procedural law consists of rules that govern procedures to ensure compliance with substantive civil law through court oversight. It outlines the steps for filing claims, their review, decision-making, and enforcing court judgments.

In civil cases, there are two types of legal actions: voluntary applications, which usually involve no disputes, and contentious lawsuits, which involve disputes. Voluntary applications are often called non-contentious or consensual proceedings, while contentious lawsuits are considered genuine disputes. However, distinguishing between them can sometimes be confusing (Mertokusumo, 2009).

The goal of the judicial process is to reach a judge's decision, also known as a court judgment, which provides legal certainty and justice for the parties involved in a dispute (Rasaid, 2003). The judge aims to ensure fairness and establish legal clarity. Once all case proceedings are completed, the panel of judges discusses and decides on the dispute, then announces their judgment. This judgment determines the rights and legal relationships of the parties concerning the dispute (Makarao, 2004). To be valid, the judgment must clearly state its basis, address all aspects of the claim, not exceed the plaintiff's demands, and be publicly pronounced during the trial. A judge's decision is a formal statement made by a judge during court proceedings. It's essential for the judge to thoroughly grasp the essence

of the dispute according to the law and societal norms. A written decision only becomes official when verbally pronounced by the judge in court.

There are several types of judicial decisions (Harahap, 2021) that judges issue in court such as: Declaratory Decision, this type of decision clarifies and confirms legal facts or statuses to establish legal certainty and define the rights of parties in a dispute. It is essential for resolving disputes and can even be included in decisions that reject claims, clarifying the legal status or lack thereof; Constitutive Decision, this decision alters legal situations by either cancelling existing legal arrangements or creating new ones. It overlaps with declaratory decisions in practice, such as nullifying contracts, which clarify legal relationships until the contract is annulled; Condemnatory Decision, this decision imposes penalties on one of the parties involved in the dispute. It complements declaratory or constitutive decisions by enforcing legal consequences but does not always require their support. These types of decisions are crucial in legal proceedings, providing clarity on legal rights and obligations in civil disputes.

The caution exercised by judges when making decisions is crucial. The claims presented often include demands for specific actions, which require judges to carefully assess every aspect of the case before deciding whether to grant them. It's essential for judges to only approve such demands if there are no legal issues or other factors that could affect the decision's effectiveness in resolving disputes. Without these demands, judges cannot issue orders that exceed their authority (*Ultra Petitem Pratum*). Essentially, condemnatory and constitutive decisions are declaratory in nature. Decisions involving actions or changes are ultimately statements of the law's application. Various factors can influence judges' decisions, including the legal foundation of claims, parties' abilities to prove their cases, and their relevance to the presented petitions.

In HIR and RBg, "execution" means enforcing court judgments when the losing party doesn't comply voluntarily. It involves compelling them to obey the court's decision through legal means if they refuse to do so on their own. Once a judgment gains legal force, it's considered final because no further legal actions can be taken. This applies to judgments from District Courts, High Courts, Court of Cassation, and Judicial Review (PK). Execution can also apply to provisional judgments or those enforced pending appeal (UbV) (Court, 2023).

In civil disputes, once a final judgment is legally binding, if the losing party complies voluntarily, court involvement isn't needed. However, if they refuse to comply, they can request court assistance to enforce the judgment forcefully. Final civil judgments can be condemnatory (punitive), constitutive (creating or changing legal situations), or declaratory (clarifying facts or legal status). A declaratory judgment states or clarifies a legal situation without penalizing any party. Essentially, every civil judgment, whether it grants or denies a claim, includes declaratory aspects (Harahap, 2010).

A declaratory judgment confirms existing legal rights without requiring immediate action. It clarifies rights or legal statuses in disputes or agreements without imposing new obligations. Unlike judgments with penalties, declaratory judgments focus on clarity rather than enforcement. While they define legal positions, they do not mandate actions. Enforcement typically requires separate legal actions to compel compliance.

Based on the research, a declaratory judgment without final legal force cannot be used to request enforcement directly. Here are the key points: 1. Enforcement through New LawsUIT: A declaratory judgment can only be enforced through a new lawsuit specifically requesting its enforcement; 2. No Automatic Execution: Without a new lawsuit, a declaratory judgment cannot be enforced on its own; 3. Immediate Execution: Execution of the judgment can be requested immediately (*Uitvoebaar bij Voorraad*), even if there are appeals or objections, as per Article 180 HIR.

Key considerations for reviewing a declaratory judgment for enforcement include: Judicial Authority, The Court cannot reassess or alter the content of a declaratory judgment once it has final legal force. Its legal reasoning and verdict are considered final and cannot be challenged to amend its content; Judge's Role, The Judge's role is limited to determining if the declaratory judgment can be enforced based on its relevance to the case and potential for execution. Not all declaratory judgments can be enforced immediately; Execution Approval, If the declaratory judgment is legally eligible for enforcement, the judge may approve the execution request directly through a court decision. Execution can proceed even if there are pending appeals or objections, as long as no further legal actions are filed to contest it.

### **The Time Limit for Requesting Execution of a Declaratory Decisions**

Civil judgments become legally binding when no appeals are filed within the specified deadlines. Execution of these judgments is governed by the HIR, from Article 195 to Article 224. According to Mr. R. Tresna (2005), court decisions can generally be enforced once they have definitive legal force, which

occurs after the deadlines for appeals or cassation have passed. This view is consistent with Mr. Rutgers' belief that there isn't a clear rule tying execution to definitive legal force under the HIR, except for specific exceptions in Article 180 paragraph. After Indonesia's independence, distinctions between the HIR for indigenous people and the Rv for Europeans and equivalent groups became irrelevant. SEMA No. 3 of 2000 and SEMA No. 4 of 2001 further clarify how Article 180 paragraph (1) allows for advance execution of judgments (*uitvoerbaar bij voorraad*), taking into account Article 54 of the Rv.

Implementing court decisions typically involves two methods: voluntary compliance and enforcement. Voluntary compliance means the losing party follows the court's orders without coercion, fulfilling their legal obligations. Enforcement, on the other hand, is used when the losing party refuses to comply voluntarily. The winning party can then seek legal assistance to enforce the judgment. If the losing party complies voluntarily, enforcement isn't necessary, as they've fulfilled their legal duties without coercion from others or legal institutions.

In civil cases, court judgments are typically executed voluntarily by the losing party. However, if the losing party refuses to comply voluntarily, the winning party has the right to seek court assistance under Article 196 of the HIR for enforcement. There is no specific legal timeframe for voluntary compliance by the losing party stated in the regulations.

If the losing party fails to voluntarily comply or forgets to do so, the winning party can request the Chief Judge of the District Court, either verbally or in writing, as per Article 195(1) of the HIR. The Chief Judge will then summon the losing party and issue a warning to comply with the judgment within a specified maximum period of eight days. If the judgment remains unexecuted after this deadline, the Chief Judge may order the seizure of the losing party's assets. The seizure will continue until an amount sufficient to cover the monetary judgment, plus all related costs, is obtained, in accordance with Article 197 of the HIR.

According to Mr. Yahya Harahap, enforcement, which involves forced actions to implement a court judgment that has attained final legal force, is only applied if the losing party refuses to comply voluntarily. If the losing party willingly complies with and executes the judgment, enforcement actions are unnecessary. Therefore, it is crucial to distinguish between voluntary compliance and enforcement of court judgments (Harahap, 2010).

The uncertainty in voluntary compliance practices leads to variations in how judgments are fulfilled across different courts. Some courts choose not to intervene in voluntary compliance, while others actively monitor and facilitate compliance. Even when compliance is voluntary, the Chief Judge of the District Court should: a. Document the voluntary compliance process; b. Have two witnesses present during the process; c. Document the proceedings and testimonies at the location where compliance occurs; d. Sign the document together with the bailiff, witnesses, and parties (plaintiff and defendant).

In civil cases, court decisions are typically enforced by the losing party. If the losing party refuses to comply voluntarily, the winning party can request court assistance for enforcement under Article 196 of the Indonesian Civil Code (HIR). There's no specific timeframe for voluntary compliance by the losing party stipulated in the law. The winning party can submit a request to the Chief Judge under Article 195 of the HIR if the losing party fails to comply within a maximum of eight days after being warned by the court. If compliance is still not met, the court may seize the losing party's assets to cover the monetary award and associated costs, as per Article 197 of the HIR.

Yahya Harahap emphasizes that court enforcement through coercion applies only when the losing party refuses to comply voluntarily. If the losing party complies voluntarily, no enforcement action is needed. Differences in how courts handle voluntary compliance can lead to varied practices. Mr. Luhut MP Pangaribuan (Rofiq, 2024) from Peradi highlighted the need for clearer regulations in the draft Civil Procedure Code to address execution issues more effectively. Current practices sometimes involve procedural delays and unclear deadlines, disadvantaging winning parties in legal disputes. He suggested improvements such as setting clear deadlines for enforcement requests after a decision is final, establishing precise review periods for these requests, and streamlining the process for securing enforcement. These changes aim to enhance procedural efficiency and legal certainty in civil enforcement.

It is important to establish clear time limits in civil procedure law to ensure effective and efficient execution processes, in line with principles of swift, simple, and cost-effective judicial proceedings. Defined time limits enable courts to properly plan the review of *aanmaning* requests, compile summaries, and prepare all necessary activities for execution. This enhances legal certainty for all parties involved in legal proceedings.

The decision of the District Court Number 415/Pdt.P/2006/PN.Sby, which contains declaratory and condemnatory elements, is an execution request against the final decision of the Supreme Court 177 K/Sip/1978, which has no legal opposition (review). The legal efforts made for the management of

the object and legal actions of the Supreme Court decision were carried out correctly according to civil procedural law in Indonesia, by filing an execution request based on Supreme Court Decision No. 177/Sip/1978 to the Surabaya District Court as the front guard (Voorpost) of the Supreme Court. This request was approved and stipulated in the form of a District Court decision. This action is in accordance with Article 195 paragraph (1) of the Herzien Inlandsch Reglement (HIR) which is related to Article 296 paragraph (1) R.Bg. Both articles affirm that the authority to execute lies solely with the District Court as the first instance court adjudicating civil cases. However, this does not diminish the rights and authority granted to the District Court if the object to be executed is outside its jurisdiction. The High Court and the Supreme Court do not have the authority to execute (Khoidin, 2011).

The decision of the District Court Number 415/Pdt.P/2006/PN.Sby, which has been requested for execution, does not contradict civil procedural law in Indonesia. Issues that cannot be resolved in the District Court (first instance) or the High Court (appellate level) may be subject to further legal remedies at the Supreme Court (cassation level). Even after exhausting all legal remedies, there is still the option of filing a judicial review (PK) if new evidence (novum) is discovered. The District Court serves as the front guard (voorpost) in executing the judgment, while the High Court acts as the front guard (voorpost) in all technical and judicial administrative matters from the Supreme Court. Often, the losing party refuses to comply with the judgment voluntarily (Sambuari, 2023). In Indonesia, there are no provisions specifying the timeframe within which the judgment must be executed by the losing party. This can be illustrated by the example where the Plaintiff filed for execution of the Supreme Court's decision many decades after it was issued.

In this context, the winning party has the right to file for execution at any time as it is their prerogative as the dispute winner. However, it should be noted that the process of filing and executing an execution request incurs costs borne by the applicant, as stipulated in the execution request decision (Article 197 HIR). Therefore, the District Court Decision Number 415/Pdt.P/2006/PN.Sby requested for execution can be considered in accordance with civil procedural law in Indonesia because there is no law regulating the deadline for filing execution requests against final and executory judgments, nor the execution of judgments. Considering that there is no specific timeframe for executing such judgments, it indirectly implies that the execution of civil judgments (declaratory, constitutive, and condemnatory) in general is not regulated regarding the timeframe for execution.

## CONCLUSION

The declaratory judgment itself does not need to be requested for execution. This type of declaratory judgment stands alone and merely confirms and establishes a specific situation, such as a decision regarding the adoption of a child. Legal experts have differing views on the implementation of declaratory judgments. One approach involves initiating a new lawsuit where the judgment is enforced against the losing party with court instructions. However, there are currently no specific regulations directly governing this process. Referring to changes in court determination mechanisms, these are based on Article 225 HIR concerning the resolution of special cases. In the author's observation, the tendency among legal experts and courts in Indonesia is to prefer the first discretion, which involves initiating a new lawsuit. This is because using the second discretion could grant excessive authority to the Chief Judge and might be seen as an abuse of power.

Often, the losing party is reluctant to comply with the judgment voluntarily. In Indonesia, there are no provisions specifying the timeframe within which the judgment must be executed by the losing party or the deadline for executing the judgment. It is crucial to establish a clear timeframe in civil procedural law to ensure an effective and efficient execution process, in line with principles of swift, easy, simple, and cost-effective judicial proceedings. In civil cases, court judgments are typically executed by the losing party.

## REFERENCES

- Ali, Zainudin. (2011). *Legal Research Methods*. Jakarta: Sinar Grafika.
- Bandung High Court, "Execution Procedure", [https://pt-bandung.go.id/prosedur-eksekusi.html#:~:text=Execution%20is%20the%20implementation%20of%20a%20judgment%20that%20has%20permanent%20legal%20force%2C%20including%20a%20decision%20on%20cassation%20and/or%20judicial%20review](https://pt-bandung.go.id/prosedur-eksekusi.html#:~:text=Execution%20is%20the%20implementation%20of%20a%20judgment%20that%20has%20permanent%20legal%20force%2C%20including%20a%20decision%20on%20cassation%20and/or%20judicial%20review.). Copyright 2017 Designed by the Supreme Court [Accessed on Thursday, August 10, 2023, at 07:19 WIB].
- Harahap, Yahya. (2010). *Scope of Issues in Civil Execution, Second Edition*. Jakarta: Sinar Grafika.
- Harahap, Yahya. (2021). *Civil Procedure Law, Second Edition*. Jakarta: Sinar Grafika.
- Hidayat, Rofiq, "Here Are PERADI's Inputs to Luhut's Leadership Regarding the Implementation of Court Decision Execution". <https://www.hukumonline.com/berita/a/begini-masukan-peradi-pimpinan->

[luhut-terkait-pelaksanaan-eksekusi-putusan-lt629f0f25c2802/?page=all](#). June 7, 2022 [Accessed on July 2, 2024].

HIR (Herziene Indlandsche Reglement, Staatsblad 1848 No. 16, Staatsblad 1941 No. 44)

Khoidin, M. (2020). *Civil Execution Law*. Yogyakarta: LaksBang Justitia.

Law No. 20 of 1974 on the Court of Appeal for Java and Madura

Law No. 4 of 2004 on Judicial Power, amended by Law No. 48 of 2009

Law No. 14 of 1985 on the Supreme Court, amended by Law No. 5 of 2004 and Law No. 3 of 2009

Law No. 2 of 1986 on General Courts, amended by Law No. 8 of 2004 and Law No. 49 of 2009

Lie, Erick Sambuari, Muhamad H. Soepeno, and Adi T. Koesumo. (2023). *Legal Implications of Parties Failing to Implement Court Decisions in Civil Cases, Lex Privatum* Vol. XI/No. 3/Mar/2023. Manado: Universitas Sam Ratulangi.

Makarao, Moh. Taufik. (2004). *Essentials of Civil Procedure Law, First Edition*. Jakarta: Rineka Cipta.

Manan, Abdul. (2000). *Application of Civil Procedure Law in Religious Courts*. Jakarta: Yayasan Al-Hikmah.

Marzuki, Peter Mahmud. (2019). *Legal Research, 14th Edition*. Jakarta: Kencana.

Mertokusumo, Sudikno. (2009). *Indonesian Civil Procedure Law: Eighth Edition*. Yogyakarta: LIBERTY.

The Constitution of the Republic of Indonesia 1945

The Civil Code (Burgerlijk Wetboek, Staatsblad 1847 No. 23)

Tresna, Mr. R. (2005). *Commentary on HIR, 18th Edition*. Jakarta: Pradnya Paramita.

Rasaid, M. Nur. (2003). *Civil Procedure Law, Third Edition*. Jakarta: Sinar Grafika Offset.

RBg (Reglement voor de Buitengewesten, Staatsblad 1927 No. 227)

RV (Reglement op de Burgerlijke Rechtsvordering, Staatsblad 1847 No. 52, Staatsblad 1849 No. 63)