

## LEGITIMACY OF IMMEDIATE EXECUTABLE JUDGMENT (UITVOERBAAR BIJ VOORRAAD) IN SMALL CLAIMS COURT

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Received : 30 January 2025

Published : 31 March 2025

Revised : 15 February 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i2.2702>

Accepted : 28 February 2025

Link Publish : <https://radjapublika.com/index.php/IJERLAS>

### Abstract

The immediate executable judgment (uitvoerbaar bij voorraad) is a form of judgment in civil procedural law that can be executed first, even though it does not yet have permanent legal force (inkracht van gewijsde). In the context of small claims court, the issuance of an immediate executable judgment raises questions regarding its legitimacy and implications for the principles of justice and legal certainty. This research aims to analyze the legitimacy of issuing immediate executable judgment in small claims court cases through juridical aspects. The research method used is normative juridical with a normative legal research approach and a conceptual approach. The data used includes relevant legal regulations, court decisions, and relevant legal literature. The research results indicate that judges have the authority and legitimate legitimacy to issue immediate executable judgment when examining, adjudicating, and deciding small claims court cases while still adhering to the strict terms and conditions outlined in Article 180 paragraph (1) of the HIR and Article 191 paragraph (1) of the RBg junctis SEMA Number 3 of 2000 concerning Immediate Executable Judgment (Uitvoerbaar bij Voorraad) and Provisional, to ensure aspects of legal certainty, usefulness, and justice.

**Keywords:** *Immediate Executable Judgment, Judges Legitimacy, Legal Certainty, Small Claims Court.*

### INTRODUCTION

In an effort to accelerate case handling and increase the productivity ratio of case resolution in civil law, the Supreme Court of Indonesia has issued "Supreme Court Regulation Number 2 of 2015 juncto Supreme Court Regulation Number 4 of 2019 concerning Procedures for Resolving Small Claims Court" (hereinafter referred to as "PERMA GS") or what is known in the Common Law legal system as Small Claims Court. The issuance of this PERMA is considered the most revolutionary because it contains reforms to the civil procedural law system in Indonesia, which was previously only regulated by Dutch East Indies legacy law in the form of HIR, RBg, and Rv.

As part of the colonial legacy civil procedural law that is still valid and used by the judicial system in Indonesia as a basis for proceedings, HIR, RBg, and Rv do not classify cases based on the value of the lawsuit, so whatever the value of the lawsuit, it will still be subject to the ordinary case resolution process with all the applicable stages and mechanisms, including the legal remedy mechanism for civil cases that can be said to be still complex and inefficient because it takes a long time and is quite costly, so for cases where the disputed value is relatively small, it becomes irrelevant and unwise to go through complex stages and mechanisms until the decision is declared to have permanent legal force (inkracht van gewijsde). Therefore, the presence of PERMA GS becomes a solution to this problem because small claims court regulate faster and more limited stage and process mechanisms, with examinations only at the district court as the first instance court, with the aim of providing ease and speed in the process of resolving small-value civil disputes.

One of the characteristics in civil procedural law that specifically applies in resolving cases through the small court claims mechanism is the limitation of rights for the parties to be able to file temporary demands (provisi), objections (eksepsi), counterclaims (rekonvensi), interventions, rejoinders in the form of replies and rejoinders, and conclusions. This has implications for simplifying the litigation process in small claims court, which only leaves the reading of the lawsuit, the answer to the lawsuit, evidence, and the final decision. In addition, for the sake of procedural efficiency, the court must have decided the small claims court case within a period of no more than 25 (twenty-five) working days, calculated from the day the first hearing begins.

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There is a civil case decision resolved through the small claims court mechanism at the Makassar District Court with Case Number 35/Pdt.G/S/2024/PN Mks, where in that case the Plaintiff in his lawsuit petition requested the Judge who examined, adjudicated, and decided the case to grant the Plaintiff's lawsuit in its entirety, namely to decide that the Defendant's actions or actions constituted a breach of contract against the Plaintiff, to sentence and order the Defendant to pay off the remaining principal debt to the Plaintiff plus the profit sharing that has not been paid by the Defendant, to place a security seizure on a plot of land and building owned by the Defendant, to request that the decision be executed first (uitvoerbaar bij voorraad) even though the decision does not yet have permanent legal force because the defendant still has the opportunity to file a legal remedy in the form of an objection, and to demand that the Defendant be obliged to be responsible for paying the costs related to the case.

In that decision, the Judge granted the Plaintiff's lawsuit in its entirety by default (verstek), but in his legal considerations regarding the Plaintiff's petition requesting that a security seizure be placed on a plot of land and building owned by the Defendant, the Judge did not provide clear legal reasons and grounds in granting it. In addition, regarding the Plaintiff's petition requesting that the decision in that case be executed first (uitvoerbaar bij voorraad), the Judge granted the petition only based on the fact that the petition regarding the security seizure had been granted, so automatically the petition regarding the immediate executable judgment also deserved to be granted.

In fact, if we look at the norms in Article 17 of PERMA GS, there is a limitation given by the regulation in the examination of small claims court, namely that demands to request temporary actions from the court before the final decision is issued (provisional demands) cannot be filed, which can also be interpreted as a request for temporary actions requested by the Plaintiff to the Judge because they are urgent and immediate. However, PERMA GS does not explicitly regulate the prohibition of filing a petition for the decision to be executed immediately (uitvoerbaar bij voorraad). This condition creates a legal vacuum (recht vacuum) that triggers debate about the Judge's authority to issue a final decision that in its ruling contains an order for the execution of the decision before obtaining permanent legal force.

Based on the background described above, the Researcher is interested in discussing, researching, and further analyzing this matter through a scientific work in the form of a journal article with a focus on 2 (two) main issues. First, is it permissible for the plaintiff to file an immediate execution demand (uitvoerbaar bij voorraad) in a small claims court? Second, is it permissible for the judge to issue an immediate executable judgment (uitvoerbaar bij voorraad) in a small claims court? The contribution of this article to the international community is to provide a deeper understanding of the validity of immediate executable judgment (uitvoerbaar bij voorraad) in resolving civil cases through the small claims court mechanism in Indonesia.

## LITERATURE REVIEW

The conceptual definition of an immediate executable judgment is a judgment that can be directly executed immediately, even though the judgment has not yet obtained permanent legal force (inkracht van gewijsde) (Abdulkadir Muhammad, 1992). The intention is that the judge is authorized to issue a final judgment containing the dictum "ordering that the judgment issued can be carried out or executed first" even though the judgment has not obtained permanent legal force, even if a legal remedy is filed against the judgment.

Research by Achmad Fauzan Lessy from Universitas Muslim Indonesia, which examines the existence of immediate execution (executie bij voorraad) in civil procedural law practice with a focus on analyzing what conditions must be met for the implementation of immediate execution and how to resolve immediate execution judgment. It can be seen that this research focuses more on the process of implementing immediate execution judgment and not in the context of cases whose resolution is carried out through the small claims court mechanism.

Similarly, Zefanya Tindas Mandagi Wuisan, et al. from Universitas Sam Ratulangi, which examines the juridical aspects of judgments that can be executed first (uitvoerbaar bij voorraad) at the Manado District Court with a focus on analyzing the conditions for the implementation of immediate execution judgment and how to execute immediate execution judgment if they are not accepted by the losing party. It can be seen that this research focuses more on the practice of executing immediate execution judgment in the field by conducting field research on cases at the Manado District Court.

There is also research conducted by Rifky Achmad Alam from Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri Purwokerto, which examines the judge's considerations in rejecting the application for an immediate executable judgment in a breach of contract dispute for a musyarakah agreement at the Purwokerto Religious Court by taking one of the judgments as the research object which focuses on analyzing the settlement of breach of contract disputes in musyarakah agreements and also examining the considerations of the Purwokerto Religious Court judge in rejecting the application for an immediate executable judgment in that case. It can be seen that this research focuses

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on breach of contract disputes with an Islamic economic character because the agreement was made based on a musyarakah agreement and also analyzes the judge's considerations in rejecting the plaintiff's application regarding immediate demands.

The author has not found any literature that discusses the aspects of immediate executable judgment (uitvoerbaar bij voorraad) in the scope of resolving civil cases through the small claims court mechanism, therefore this research is important to determine the validity or legitimacy of issuing immediate executable judgment in the context of small claims court cases by using the theory of legal certainty as analysis instruments in solving and answering legal problems.

Jan Michiel Otto details the theory of legal certainty in a material sense which includes: The existence of clear, consistent and easily accessible legal rules issued by and recognized by state power; Government institutions regularly implement legal regulations in all their actions and are also subject to these regulations; Society generally complies with and adjusts themselves to the applicable legal rules; Judicial institutions through independent and impartial judges consistently and consequently apply and enforce legal rules in the dispute resolution process they handle; and Court decisions are concretely implemented (Sidharta, 2006). When viewed from a juridical dimension, the concept of legal certainty means that the formulation of legal norms is clear and not ambiguous, applied in accordance with the principle of *similia similibus* (the same legal rules are applied to the same cases) (I Dewa Gede Atmadja, 2018).

Further matters that can be reviewed and researched further in future research are regarding the aspects of legal protection for defendants who are subject to immediate executable judgment (uitvoerbaar bij voorraad) in small claims court cases using the theory of legal protection in order to create legal certainty, usefulness, and justice.

## METHOD

This type of research is normative legal research or juridical normative research, which is legal research conducted by conducting document studies, statutory regulations, and also conducting literature reviews (Soerjono Soekanto, 2006). The approach methods used in this research are the statute approach and the conceptual approach. The statutory regulation approach is carried out by examining all statutory regulations and regulations related to the legal issues being handled, while the conceptual approach is carried out by studying views and doctrines in legal science which will then find relevant legal meanings, concepts, and principles to the issues faced (Peter Mahmud, 2024). This research uses prescriptive research specifications, which provide arguments that have been put forward regarding what should be according to law about the facts or legal events from the research results (Mukti & Yulianti, 2010).

The data collection method used in this research is library research, which is research conducted by reading and studying a number of books, literature, scientific journals, and internet websites related to the problem being studied to obtain references that can be used as a theoretical basis in the research and then identified and studied as a whole unity. The data analysis method used in this research is qualitative analysis, which is data processing based on the facts obtained, then arranged systematically and then analyzed qualitatively to obtain answers to the problems being studied (Soerjono Soekanto, 2001).

## RESULTS AND DISCUSSION

### The Existence of Immediate Executable Judgment (Uitvoerbaar bij Voorraad) in the Scope of Civil Case Resolution Through Small Claims Court

Small Claims Court in Black's Law Dictionary is defined as "a court that informally and expeditiously adjudicates claims that seek damages below a specified monetary amount, usually claims to collect small accounts or debts, also termed small-debts court; conciliation court" (Sonyendah & Rouli, 2019) and in the Merriam-Webster Dictionary is defined as "a special court intended to simplify and expedite the handling of small claims on debts" (Merriam-Webster Dictionary, 2024). Meanwhile, in Article 1 number 1 of PERMA GS, it is defined that "The Resolution of Small Claims Court is a procedure for examination in court hearings of civil lawsuits with a material lawsuit value of no more than Rp500,000,000.00 (five hundred million rupiah) which is resolved with simple procedures and evidence."

The issuance of PERMA GS is a concrete form of implementing justice that prioritizes the principles of simplicity, speed, and low cost, which has a spirit of reform to expand the accessibility of justice for the community, especially in simple civil legal relations, so that case resolution does not require a long time. In addition, with the availability of a fast and simple case resolution mechanism for disputes with small lawsuit values, it is expected to boost the ease of doing business index and the growth of the investment climate in Indonesia (H.M. Syarifuddin,

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2020). With the simplification of procedural procedures such as the prohibitions mentioned in Article 17 of PERMA GS and time limits in small claims court cases, judges are required to conduct trials effectively and efficiently. However, this does not reduce the judge's obligation to include legal considerations based on appropriate and correct legal reasons and grounds in their decisions.

One of the limitations in resolving civil cases through the small claims court mechanism is the prohibition of filing provisional demands. Provisional demands are temporary actions requested by the plaintiff to the judge to avoid greater losses for the litigating parties. Because provisional demands are urgent, the decisions that grant provisional requests are always immediate (*uitvoerbaar bij voorraad*).

Although immediate execution is always inherent in provisional demands, provisional demands and immediate execution demands are 2 (two) different things theoretically and conceptually. Provisional demands aim to take temporary actions to protect the interests of one party before the final decision is issued, while immediate execution demands are demands for court decisions to be executed immediately, without waiting for the decision to have permanent legal force (*inkracht van gewijsde*) and even though legal remedies are still available for the losing party.

For example, the form of provisional demands can be an order to temporarily stop construction on disputed land or an order to seal assets to prevent transfer or sale when the case is still in the examination process and the final decision has not been issued. Meanwhile, the form of immediate execution demands can be the payment of a sum of money that must be executed immediately or the eviction of a house that must be executed immediately, which is stated in the form of a final decision, even though the decision does not yet have permanent legal force.

The main differences between provisional demands and immediate execution demands can be seen from 3 (three) aspects as follows:

1. Execution Time

Provisional is temporary and before the final decision, while immediate is the execution of an existing decision, even though it does not yet have permanent legal force.

2. Purpose

Provisional aims to protect temporary interests, while immediate aims to accelerate the execution of the decision.

3. Nature/Form of Decision

Provisional demands are decided in interlocutory decisions (*tussen-vonnis*), while immediate demands are inherent in the final decision (*eind vonnis*) of the principal case.

The legal basis for provisional demands and immediate demands is regulated in the provisions of Article 180 paragraph (1) of the HIR and Article 191 paragraph (1) of the RBg, which reads: "The chairman of the district court can order that the decision be executed first even if there is resistance or appeal, if there is a valid letter, a handwritten letter that according to applicable regulations can be accepted as evidence or if there is a prior sentence with a decision that has obtained permanent authority, as well as if the provisional demands are granted, also in disputes about ownership rights."

In addition to being regulated in Article 180 paragraph (1) of the HIR and Article 191 paragraph (1) of the RBg, the Supreme Court has issued Supreme Court Circular (SEMA) Number 3 of 2000 concerning Immediate Executable Judgment (*Uitvoerbaar bij Voorraad*) and Provisional, which is a guide for the Chairman of the Court and also the Judges to consider, pay attention to, and strictly comply with the conditions that must be met before granting immediate execution demands (*uitvoerbaar bij voorraad*) and provisional decisions, namely:

- a. The lawsuit is based on authentic documentary evidence or handwritten documents (*handschrift*) whose truth about the content and signature is not disputed, which according to the law does not have evidentiary force;
- b. Lawsuits concerning debts whose amounts are certain and undisputed;
- c. Lawsuits concerning the lease of land, houses, warehouses and others, where the lease relationship has expired/passed, or the lessee is proven to have neglected his obligations as a good faith lessee;
- d. The subject of the lawsuit concerns the division of marital property (*gono-gini*) after the decision regarding the divorce lawsuit has permanent legal force;
- e. The granting of provisional lawsuits, with <sup>1</sup> the consideration that the law is clear and clear and fulfills Article 332 Rv;
- f. Lawsuits based on decisions that have obtained permanent legal force (*inkracht van gewijsde*) and have a relationship with the subject of the lawsuit filed;
- g. The subject of the dispute concerns *bezitsrecht*.

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In addition, if an immediate executable judgment is issued by the Judge and if the Plaintiff submits a request to the Chairman of the Court for the immediate executable judgment and provisional decision to be implemented, then the request and case file are sent to the High Court. Another crucial point, the SEMA emphasizes that there must be a guarantee (deposit) of the same value as the value of the goods/execution object, so that it does not cause losses to other parties, if later a decision is issued that cancels the first instance court decision. In the procedures for resolving small claims courts, it has been explicitly regulated that provisional demands cannot be filed, which raises the question of what is the background and purpose of the prohibition, because provisional demands in civil procedural law are generally part of the rights owned by the plaintiff.

If we look at Article 5 paragraph (3) of PERMA GS, which limits the time for resolving small claims court cases to 25 (twenty-five) working days from the first hearing, then the speed of this process certainly has implications for many things, including the fact that there is no need to file provisional demands because even if there are urgent interests, it will not become a crucial problem because the process of resolving small claims court cases is carried out more quickly. In addition, the types of principal cases that can be filed through the small claims court mechanism are only related to events of breach of contract (*wanprestatie*) and unlawful acts (*onrechtmatige daad*) that do not include land rights disputes, so even though the plaintiff is not given space to file provisional demands, this will not hinder the litigation process because these two types of disputes generally do not require provisional demands.

If the provisional demands have been regulated firmly and explicitly in PERMA GS, this is not the case with immediate execution demands. PERMA GS does not mention literally the prohibition for plaintiffs to file immediate execution demands. Thus, if viewed from the theory of legal positivism which views that the main source of law is written statutory regulations made by authorized state institutions that emphasize the importance of aspects of legal certainty, namely clear, certain, and predictable, and also viewed from the concept of legal certainty in the juridical dimension which views that the formulation of legal norms must be clear and not ambiguous, and using the help of legal interpretation in the form of restrictive interpretation, namely a method of legal interpretation that limits or narrows the meaning of a legal provision, then immediate execution demands are not prohibited and can be filed in the small claims court examination process because basically immediate execution demands are different from provisional demands.

In addition, it can also be seen in Article 32 of PERMA GS concerning Transitional Provisions, which reads "The provisions of civil procedural law remain valid as long as they are not specifically regulated in this Supreme Court Regulation" so that with legal reasoning from the wording of this article, it can be seen that judges have the authority and legitimate legitimacy to issue immediate executable judgment when examining, adjudicating, and deciding small claims court cases while still adhering to the provisions outlined in Article 180 paragraph (1) of the HIR and Article 191 paragraph (1) of the RBg junctis SEMA Number 3 of 2000 concerning Immediate Executable Judgment (*Uitvoerbaar bij Voorraad*) and Provisional.

However, an important thing that judges need to realize is that the application of immediate executable judgment that can be executed first (*uitvoerbaar bij voorraad*) is facultative (optional) and discretionary, meaning that judges can grant and order decisions that can be executed first and are not imperative, therefore judges are not obliged to grant them. In fact, through the various requirements that have been explained in the SEMA above, it can be interpreted that the Supreme Court subtly prohibits applying it by using the language "not issuing decisions that can be executed first even if the conditions are met" (M. Yahya Harahap, 2005).

### CONCLUSION

The existence of the issuance of immediate executable judgment (*uitvoerbaar bij voorraad*) by judges in the scope of resolving civil cases through the small claims court mechanism has legitimate legal legitimacy, where PERMA GS does not clearly regulate immediate execution demands, so based on the theory of legal positivism, the concept of legal certainty, the restrictive interpretation method, and the transitional provisions contained in PERMA GS, it can be concluded that immediate execution demands are not prohibited and can be filed in the small claims court examination process because basically immediate execution demands are different from provisional demands which are explicitly prohibited in PERMA GS.

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