

# THE PROBLEM OF EXECUTION IN DISTRICT COURT AGAINST OVERLAPPING COURT DESCISION (A Study at the Cianjur District Court)

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Received : 15 January 2025

Published : 30 March 2025

Revised : 31 January 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i2.2766>

Accepted : 18 February 2025

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

## Abstract

Execution is a crown for a court especially for the head of district court to execute the court decision. In principle, execution does not need to be submitted through the district court if the losing party or defendant is willing to voluntary perform or fulfill the performance of the court decision (article 195 paragraph 1 HIR of article 206 paragraph 1 RBG). The petition of execution may only be filled against a court decision that meets the requirement for execution. In the practice law field, the problem with the implementation of execution of overlapping court decision with the similar or same object, same party, but have different court decisions. The research method used is normative juridical and the data used includes relevant legal regulation, court decisions and relevant legal literature. Therefore, towards this issue, this journal will discuss and convey solutions related to the issue of execution and its resolution strategy, with the aim that the court decision will be able to be executed (executable judgment).

**Keywords:** *Execution, Court Decisions, Executable Judgment, Non-Executable, Judicial Review*

## INTRODUCTION

Execution is the authority possessed by the court, both the district court, religious court, and state administrative court. Generally, execution carried out against court decision after the decision has permanent legal force (*inkracht*). But in the other case, the implementation of execution can be executed based on quasi-judicial institution such as;

1. National arbitration decision as stated in article 59 and article 61, article 65, article 66 letter d, article 67 paragraph 1, and article 69 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution;
2. The decision of the consumer dispute settlement body (BPSK) as contained in article 54 to article 57 Law Number 8 of 1999 concerning Consumer Protection;
3. The decision of the business competition supervisory commission (KPPU) which regulated in article 46 of Law Number 5 of 1999 in conjunction with supreme court regulation number 3 of 2005;
4. The decision of the information commission which regulated in article 46 of Law Number 14 of 2008 Concerning Public Information Disclosure.

Other than that, the District Court also has the authority to execute notarial deeds as contained in Article 224 HIR/258 Rbg. Execution is a part of and included in the process of implementing the procedural law as regulated in HIR and RBG. An application for execution is submitted by the execution applicant to the District Court if the execution respondent or defendant does not carry out its obligations or does not carry out obligations or achievements voluntarily based on the court decision.

Article 195 paragraph (1) HIR / Article 206 paragraph (1) Rbg explain that the jurisdiction or authority of execution is owned by the chief of district court or only be given to the first level judicial institution. This means, even though a case is appealed to the High Court or cassation to the Supreme Court, if the decision of the Court of Appeal or Supreme Court is to be executed, a petition for execution may be filed with the District Court (M. Yahya Harahap 2005).

One of the requirements for a request for execution to be carried out is *condemnatoir* verdict. *Condemnatoir* means a verdict in the form of punishment or order that should be doing by the defendant. If the verdict in which execution is requested only contains declaratory and constitutive verdicts, it will certainly be declared non-

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executable. The issue of condemnatory verdict will later develop into the issue of overlapping court decisions, with the same object, same party but different result especially for cases that occurred before 2010 or before the application of the Case Tracking Information System or (SIPP) launched. There are several criteria of a non-executable judgment is declared as non-executable, such as (Supreme Cort Book II 2007);

1. The verdict is declaratory or constitutive;
2. The object to be executed are not in the hands of the defendant or applicant for execution;
3. The object which will be executed does not match with the object which mentioned in the verdict;
4. The court decision is impossible to be executed;

Based on that criteria for non-executable judgment, the overlap court decision with the same object are not included, even though it is very unlikely for the district court to carry out the execution against the overlapping court decision. If the verdict that is requested for execution only contains declaratory and constitutive verdicts, it will certainly be declared non-executable, then if the applicant for execution wishes to file an execution against a verdict with the same object, then the applicant for execution must first file a lawsuit with a lawsuit immediately (*uitvoerbaar bij voorraad*) to the Court that issued the verdict just to add a petitum that contains a condemnation (*condemnatoir*).

For instance, in the Cianjur district court, there are cases between PT Maryawattie Subur against PT Mutaiar Bumi Parahyangan in 1997 until 2002 with the conclusion the object is owned by PT Maryawattie Subur. Further, in 1999 to 2000 there is a claim with the same object as PT Maryawattie Subur and PT Mutaiara Bumi Parahyangan where PT Aditarina Graha Lestari as Plaintiff against PT Maryawattie Subur PT Mutiara Bumi Parahyangan as defendant and the verdict is PT Aditarina Graha Lestari as as the prevailing party based on a court decision. Based on the example of the above decision, a question arises who is entitled and authorized to file a request for execution?

Based on the above explanation, this research aims to analyze execution petition filed in the district court against overlapping district court decisions in order to obtain solutions to problem solving so as to provide certainty and justice for the society

## LITERATURE REVIEW

Execution is the crown of the court. thus, if the court decision is highly expected if it can be executed. Regarding this problem, there are several studies that have previously been conducted but not specifically discussing overlapping court decisions so that the court decisions cannot be executed. Research by Nyaka Fally Diarsa, which examine the execution of fiduciary security objects may be carried out without going to court or could be executed immediately. However, this research does not discuss overlapping court decisions. Further, research by Bunga Adelia Sukma which examine control of the object of Mortgage in an auction that is obstructed by a lawsuit and legal protection for buyers and applicants related to control of the object of auction that is obstructed by a lawsuit that is declared *ne bis in idem*.

The author has not found any literature that discusses the aspects of overlapping court decision in the scope of implementing for application for execution. Therefore, this research is important to determine the legal aspect, and certainly law for the society by using the theory of legal justice and answering legal problems. Rawls' theoretical concept of justice is basically based on Rauseau's social contract and Kant's ethics as well as John Locke's individual rights. (Jan Hendrik Raper 1991).

## METHOD

This type of research is normative legal research or juridical normative research. Normative legal research is research that uses or places the law as a system of norms, in other words, normative legal research is research that examines positive legal norms as the object of study. (Abdulkadir Muhammad: 2004). In addition, normative legal research or legal research can also be said to be research that examines principles and systematics, as well as rules and regulations, court decisions and doctrines and international agreements. (Soerjono Soekanto:1981).

The author will use a case approach where in this research the author examines cases that occur against court decisions where the decision consists of several decisions with the same case and parties but with different rulings and winning parties. For this research, the author will conduct research on legal principles where there are court decisions that overlap with other court decisions, so that the court decisions cannot provide legal certainty for the society. The specification used in the research is descriptive research specification. Descriptive research aims to obtain a description or reality that occurs regarding requests for execution of overlapping court decisions at the Cianjur District Court.

The technique of collecting legal materials is done through literature study and document study. what is meant by bibliography study is the study of written information about the law that comes from various sources and is widely published and needed in normative legal research.

## **RESULTS AND DISCUSSION**

The judge's decision is one of the gateways to submit a request for execution where one of the objects that can be executed in addition to the decision of the quasi-judicial institution, but also the judge's decision or court decision that has permanent legal force. The judge's decision can be cited in Article 25 of Law Number 4 of 2004 as amended by Law Number 48 of 2009 concerning judicial power which states that; "All court decisions must not only contain the reasons and bases for the decision, but must also contain certain articles of the relevant regulations or unwritten sources of law which are used as the basis for adjudicating." Further, one of the objectives of the judge's decision is to provide legal certainty and justice for the parties who are being tried. (Mohamad Taufik Makaro:2004).

Although there is a debate whether a judge in dealing with civil cases must be passive or allowed to be active, the objectives of implementing the law must be achieved, namely legal certainty, justice and order, where in practice, judges must explore the provisions of laws and regulations as well as in the laws that live in society or known as living law. (Riduan Syahrani:2015). In the Judicial Power Act, matters that must be contained in a judge's decision can be such as;

1. clear and detailed legal basis for the reason as contained in Article 25 paragraph (1). In addition, based on the provisions of Article 178 paragraph (1) HIR, it is stated that judges, due to their position or ex officio, are obliged to fulfill the legal reasons that are not stated by the litigants.
2. consider all parts of the lawsuit as contained in Article 178 paragraph (2) HIR, Article 189 paragraph (2) Rbg, and Article 50 RV where the judge is required to conduct a thorough examination of the arguments of the lawsuit submitted by the plaintiff, and the judge is not allowed to hear only part of the lawsuit.
3. May not grant more than the claim, as known in the principle of *ultra pettitum partium* which is also emphasized in the provisions of Article 178 paragraph (3) HIR and Article 50 RV where the judge is not allowed to grant more than the statement and petition of the lawsuit.

Thus, the judge's decision is a very important factor related to the execution of court decisions that are not implemented voluntarily.

### **Process of Application for Execution**

Based on the court's decision, the execution applicant can request execution to the court. The process of the request for execution itself can be started from the existence of a request for execution requested by the applicant for execution, then against the request for further execution review is carried out to determine whether the request can be executed or not. For applications that can be executed, then the Chief of the District Court gives *aanmaning* or warning to the execution Respondent for 8 (days) then proceed with *constatering* or matching the boundaries and objects to be executed, and finally the determination of execution read by the bailiff at the location of the object of execution. Please note, execution consists of 4 types of execution, namely;

1. Execution to punishes the party defeated or defendant in the trial to make payment of a sum of money as contained in Article 196 HIR/208 Rbg;
2. Execution of a court decision that punishes a person to perform an act as stated in article 225HIR/259 Rbg which stipulates that if the execution Respondent after 8 (eight) days of *aanmaning* is still not willing to carry out the action that has been decided, then at the request of the Execution Petitioner either in writing or orally the Chairman of the District Court may change the dictum of the decision regarding certain actions to be replaced with a sum of money.
3. Execution of court decisions on environmental civil cases.
4. Rill execution is the execution of a condemnatory or punitive judgment or an order against the losing party in a trial.

### **Overlapping Court Decision**

As explained above, the problem of execution is overlapping court decision with the same parties and object. in the Cianjur district court, there are cases between PT Maryawattie Subur against PT Mutaiar Bumi Parahyangan in 1997 until 2002 with the conclusion the object is owned by PT Maryawattie Subur. Further, in 1999 to 2000 there

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Based on the court decision, the case between PT Maryawttie Subur and PT Mutiara Bumi Parahyangan, could not be executed because there were several court decisions or verdict on the same object and won by different parties. In the case of such court decisions, it is the society that suffers as they cannot access justice. compared with the objectives of law according to Gustav Radburch where there are 3 (three) legal objectives, namely legal certainty, legal justice, and legal expediency, then such a decision cannot achieve the objectives of the law itself.

The solution to the problem of overlapping court decisions can be resolved by using progressive legal theory as proposed by Satjipto Rahardjo. Progressive law in principle has close ties with other schools of law, which are related to each other, namely, the closeness of progressive law to Roscoe Pound's sociological jurisprudence is perhaps only a matter of the desire to always move forward or progress in both. The rest, the two are different in many ways, because sociological jurisprudence places law as an important instrument in engineering society, while progressive law wants to let the law flow. (Satjipto Rahardjo:2009). Based on this progressive legal approach where the law must keep up with the times and not be rigid over existing social changes, the problem of overlapping court decisions can be resolved using progressive legal theory.

## Judicial Review (*Peninjauan Kembali*) as Solution

Judicial review is one of the solutions to overcome the problem of overlapping decisions that cannot be executed. For the second (more than once) request for judicial review, it can be done on the grounds that there are two permanent legal decisions that contradict each other as referred to in SEMA Number 10 of 2009 jo SEMA Number 4 of 2016. in principle, the submission of a judicial review can only be done once. If the submission of a judicial review is done more than once, it is considered to be in conflict with the provisions of laws and regulations. Regarding these provisions, an exception is made in the provisions of SEMA 10 of 2009, whereby if two decisions which have permanent legal force are contradictory, then a judicial review can be submitted.

Please noted that that in 2024, there were 3,498 execution requests, of which 1,199 were executions of mortgage rights. This number is much lower compared to the execution requests in 2023, which previously reached 3,866 execution requests. Furthermore, in the period from 2020 to 2024, execution requests ranged from 3000-4000 execution requests, while the implementation of executions always experienced a significant increase, reaching more than 4000 executions in 2024. Based on the data as mentioned above, of course the Supreme Court always improves the practice of implementing executions. However, based on the facts found in the field, problems were found in the implementation of executions which are part of the execution that is non-executable.

Regarding the data on execution requests submitted to the court and the number of execution requests that have been carried out, this will of course increase if a judicial review can be submitted for the overlapping court decisions so that execution can be carried out for the case. Through the circular of the Supreme Court, the principle or application of the purpose of law is to provide certainty, justice and benefit as explained by Gustav Radburch, and dare to apply progressive law as stated by Satjipto Rahardjo, even in any case a judicial review (PK) can only be submitted once, both in civil and criminal cases, based on Article 66 paragraph (1) of Law Number 3 of 2009 concerning the Supreme Court.

## CONCLUSION

Overlapping court decision This was before the Supreme Court issued the case tracking information system (SIPP). This is very likely due to the lack of information related to the case at that time. However, with the current conditions, the past decision raises problems, especially in the execution application that will be filed. to overcome this, the legal effort that can be done is to submit a review to the supreme court to provide legal certainty. the Supreme Court's policy contained in SEMA Number 3 of 2009 which allows for more than 1 review is a breakthrough in the implementation of progressive law and to provide the purpose of the law itself.

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