

## RECONSTRUCTION OF REGULATIONS OF THE EXECUTION OF JUSTICE VALUE-BASED CIVIL JURISDICTIONS

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### ABSTRACT

All this time, many court decisions in civil cases have been hampered and even difficult to implement, even though the principles of simple, fast, and cost-effective justice also apply at the time of execution. The petitioner for execution who hopes that his rights can be exercised by the respondent, must also prepare a large execution fee. The imposition of execution costs on the applicant is certainly very detrimental to the applicant because in addition to the execution, it is not the fault of the applicant, but because of the respondent's unwillingness to carry out the decision voluntarily. The purpose of this study is 1) to analyze the regulations for the execution of civil case decisions that have not been fair, 2) to analyze the weaknesses of the execution of civil case decisions that have permanent strength based on Justice. This study uses a postpositivism paradigm, with a normative juridical approach through a law approach, a concept approach, a comparative approach and a case approach. The legal theory used to analyze the problem are the theory of justice, the theory of Pancasila justice, the theory of the legal system, the theory of legal protection, the theory of the operation of law and the theory of progressive law. The results of the study found that 1) Execution regulations in civil cases that have legal force are still not fair, because there is injustice and legal uncertainty related to a) Execution of executions, b) Requests for execution, c) Summons and security, d) Execution of payment of a sum of money, and e) Real execution. Some of the execution regulations in HIR/RBg are no longer compatible with the values of the Indonesian nation and the development of modern society, so there is an urgent need for reconstruction to provide justice and legal protection for justice seekers. 2) Weaknesses in the execution of civil cases that have not been fair, due to the weakness of the legal substance in HIR contained in Article 196 paragraph (1), Article 196 paragraph (2), Article 196 paragraph (2) A, Article 196 paragraph (2) B, Article 197 paragraph (1), Article 197 paragraph (1) A, Article 197 paragraph (1) B and Article 197 paragraph (9). And Article 40 paragraph (1) of Law Number 2 of 1986 in conjunction with Law Number 49 of 2009 concerning General Courts. The weakness of the legal structure consists of the heavy burden of duties and responsibilities of the Head of the District Court, the lack of support from the Government and the Legislator for civil procedural law reform. Meanwhile, the weakness of legal culture/culture, namely the respondent's efforts to slow down and avoid executions. and from the applicant's side, namely because of the large execution costs. 3) Reconstruction of the value of justice in the regulation of the execution of civil cases, namely providing certainty and justice for applicants for execution, and reconstruction of norms for the execution of civil cases so that it is based on justice.

Key words: Reconstruction; The Execution; Justice Value-Jurisdictions;

### INTRODUCTION

The main requirement for execution is that there must be a title. The title contains a person's rights that must be implemented. Therefore, the judge's decision has executorial power, namely the power to carry out what is stipulated in the decision by force by state instruments. <sup>1</sup>As for what gives executive power, the judge's decision is the head of the decision which reads "For Justice Based on God Almighty". <sup>2</sup>This is in accordance with Article 2 paragraph (1) of Law Number 48 of 2009 that the judiciary is conducted "for the sake of justice based on the One Godhead".

The examination of the case ends with a decision, but the matter is not finished with the decision. The decision must be enforceable or enforceable. A court decision is meaningless if it cannot be implemented. The implementation of the judge's decision or execution is essentially nothing but the realization of the losing party's obligation to fulfil the achievements stated in the decision.

In reality, not all losing parties are willing to voluntarily carry out the contents of the decision as a realization of their obligation to carry out the sentence imposed in the decision. Many justice seekers have had disappointing experiences when civil disputes have been successfully resolved but have not been implemented by the losing party. The process leading to the execution of the verdict also took a long time, even though he was on the side that the court won.

Several civil cases that take a long time to be executed, for example, occurred in the Central Jakarta District Court which finally executed the land and building of the LPK Saint Mary campus, on Jalan AM Sangaji Number 6, Central Jakarta. The attorney for the execution request, revealed that today's execution was a victory for his client who had been in a dispute for more than 16 years with the party who used the land. In 2007, the West Jakarta Court had determined the execution, then delegated the decision to the Central Jakarta District Court because of its location in Central Jakarta. <sup>3</sup>

In the case of debt, between Reka Mayasari, who won the default case against Wahyuningsih, had to wait 6 years to be executed. Then in the case of land grabbing, Dewi Anjarwati (Kabat, Banyuwangi), even though she has received a copy of the

<sup>1</sup> Aries Saputro, Payment of Compensation for Officials Who Did Not Implement the Decision of the State Administrative Court, uridika: Volume 35 No 2, May 2020, pp. 231-255

<sup>2</sup> Sudikno Mertokusumo, 1999, *Mengenal Hukum Suatu Pengantar*. Yogyakarta : Liberty. p.183.

<sup>3</sup> Yanuar Putra Erwin, Juridical Study Of The Execution Of Industrial Relations Court. Secretariat General of the House of Representatives of the Republic of Indonesia, 2015.

Supreme Court's decision Number 2072K/pdt/2011, does not mean that the Banyuwangi District Court has executed the land until now. (approximately 8 years). The land dispute began with the plaintiff's only land being seized by the defendant, until the dispute was brought to court. In a civil trial at the Banyuwangi District Court with case number 103/pdt.G/2009/PN.Bwi, the panel of judges tried and stated according to law, that the control of the disputed house and land by the defendants was against the law.

Therefore, it is undeniable that litigation in court, especially in civil proceedings, requires a lot of energy, time and money, including the implementation of decisions that have permanent legal force. In addition, civil proceedings in court can take months or even years. This happens when all legal remedies against the decision are taken from the level of appeal, cassation and review.

In practice, the execution of civil cases is a process that is quite tiring for the litigants, in addition to consuming time, energy, money, energy and thoughts. Decisions do not mean anything if the results are limited to black and white decisions. Victory that is in sight sometimes still requires a long process to be able to get it in real / concrete. This happens because in practice the execution often encounters many obstacles. This is mainly due to the fact that the losing party generally finds it difficult to accept defeat and tends to reject decisions that are legally binding in various ways. So sometimes the Chief Justice has to "step in" to expedite the execution.<sup>4</sup>

However, the fact is that until now the execution of court decisions in civil cases is very difficult to carry out, whether in civil cases in the scope of small or large cases with various obstacles faced, namely reasons for the discretion of the chairman of the court, delays in execution because of *Derden Verzet*, delays due to reconsideration, delays due to land objects. executions are not clearly defined, and the delay is due to security reasons, for humanitarian reasons.

Based on the legal issues regarding the postponement or postponement of the execution of court decisions above, it is clear that there is no general standard used as a legal reference, for the sake of certainty and the value of justice in the proceedings in court. This is actually contrary to the principles of general regulations that apply with regard to execution; namely: a. Every court decision that has permanent legal force has executive power attached. b. The execution of court decisions that have permanent legal force may not be delayed. c. The only thing that can delay the execution is peace according to the affirmation of Article 195 paragraph (1) and Article 224 HIR, or Article 206 RBg paragraph (1), Article 258 RBg<sup>5</sup>

Every decision on a civil case dispute should be implemented either voluntarily or by coercion through a request for execution. Because, in fact, this is to realize or restore the civil rights of every citizen related to the dispute. This is in line with the relevant human rights, as regulated in Article 28H paragraph (4) of the 1945 Constitution, namely: "Everyone has the right to have private property rights and such property rights may not be taken over arbitrarily by anyone".

The state, in this case the government, is obliged to provide protection to its citizens by making binding regulations in legal products. This has also been explicitly regulated in Article 28 D paragraph (1) of the 1945 Constitution that "everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law" and Article 28 I paragraph (4) and (5) UUD 1945 that: "Protection, promotion, enforcement, and fulfilment of human rights is the responsibility of the state, especially the government". and "To uphold and protect human rights with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and set forth in laws and regulations"

The implementation of the decision is important to guarantee the rights of individuals or legal entities that have been determined by the court through a court decision. The failure to implement court decisions has an impact on weak legal certainty and decreased public trust in court institutions. This can encourage low interest in business actors to use the courts as a dispute resolution mechanism, which in turn has an impact on investment levels. The delay in completing the business contract (through the courts) is also one of the factors influencing Indonesia's ranking in terms of ease of doing business. Therefore, it is urgent to improve the execution of court decisions in civil cases.

Launching the Ease of Doing Business (EoDB) data released annually by the World Bank, it shows that in 2019 Indonesia was only ranked 73rd out of 190 countries with a score of 67.96. Based on court-related indicators, Indonesia is ranked 146th for enforcing contracts and 36th for resolving insolvency. "This ranking is still far from the target of the Economic Reform Policy Package initiated by President Joko Widodo, namely the Industrial Revolution 4.0.

The Director of Law and Regulation of National Development Planning Agency, Prahesti Pandawangi, assesses that the factors that make it difficult to overcome the execution of civil decisions, one of which is that there is no database on the number of execution requests, both the number of cases that have been successfully executed and those that have not been successfully executed by the bailiff led by the head of the court. In fact, currently there are 3,724 bailiffs spread over 910 work units with on average each work unit only has four bailiffs.

The 2020-2024 RPJMN Technocratic Draft in improving the civil system, one of which is the preparation of a bailiff institutional evaluation study to ensure legal certainty in the civil execution system. Therefore, he proposed several things. First, the formation of technical rules related to civil executions that adapt to the characteristics of the type of civil case. Second, the availability of data, mapping of the follow-up to civil decisions, both voluntary executions and requests for execution. Third, optimizing existing units through the development of bailiff human resources, clarifying the authority of the head of the court, and a stable mechanism related to civil executions. Fourth, a coordination system with relevant stakeholders to optimize asset tracing efforts and an asset database system that is integrated with civil registration.

The non-execution of the court's decision forces the need for assistance from other parties, in this case the court, as the party authorized by law to "force" the losing party to implement the decision. Thus, the end result that is actually expected RBg decision, but also the implementation of the decision.

The implementation of court decisions in civil cases is carried out by the clerk and the bailiff led by the head of the court as stipulated in Article 54 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power. In addition, in carrying out court decisions, it is also necessary to pay attention to the values of humanity and justice as stated in Article 54 paragraph (3) of Law Number 48 of 2009 concerning Judicial Power. Regarding the implementation of this decision, it is also stipulated in HIR Articles 195-224 and RBg Articles 206-240 RBg and 258 RBg.

<sup>4</sup> Wildan Suyuthi, 2014. *Sita Eksekusi Praktek Kejurusitaan Pengadilan*, Jakarta: PT.Tatanusa, p..60.

<sup>5</sup> Djazuli Bachar, 1987. *Eksekusi Putusan Perkara Perdata Segi Hukum dan. Penegakan Hukum, Akadematika Pressindo, Jakarta..p.67.*

The existence of court intervention in fulfilling court decisions voluntarily is intended to avoid uncertainty in law enforcement. So, the period of voluntary implementation of the decision by the defeated party is not regulated in the legislation. If the decision is not implemented, the winning party can enforce the execution by submitting an application to the Chief Justice.

In Article 195 paragraph (1) HIR or Article 206 paragraph (1) RBg, carrying out the execution of absolute court decisions is only given to the first level judicial institution, namely the District Court. The High Court or Supreme Court does not have the authority to carry out executions, and it does not matter whether the decision to be executed is the result of a high court or Supreme Court decision, the execution remains under the authority of the relevant district court that decides the case at the first level. Based on the provisions referred to above, the law centralizes execution in the District Court in law enforcement and services.

Ordering the termination of execution of district court institutions is very effective and avoids power struggles between the judiciary. The High Court and the Supreme Court cannot interfere with executions carried out by the District Court. The appellate level or cassation level agency only acts to supervise and straighten the course of execution if there are deviations when carrying out executions if there are deviations during execution. As long as there is no deviation, the judiciary at the appellate level or at the cassation level is not authorized to interfere. However, the High Court and the Supreme Court may give instructions and directions for the proper execution. The High Court or the Supreme Court can give instructions and directions to the District Court in an execution, if it is requested or not. It is natural for the High Court or Supreme Court to interfere in deviant executions. This is in accordance with the structural function that places higher courts to supervise and correct the wrongful actions of lower courts. If a higher court is not given the authority to supervise and correct wrong and deviant executions, it can result in abuse of authority by the District Court.

Higher judicial absolutes must not interfere with executions carried out by the District Court, must be understood and placed in a professional framework with hierarchical supervisory and corrective actions. The absolute authority of the district court as the executor of execution should not be interpreted as an act that is free and out of control from the supervision and correction of a higher court. The Heads of District Courts need to be aware of this reference of understanding, so that they can position themselves as implementing decisions that do not escape warnings and corrections from higher courts in a supervisory system by higher institutions. The understanding of the notion of supervision and correction expressed in essence is not only for the judiciary, but also for the community seeking justice.

Based on the description in the background of the problem, the problems to be analyzed in this research can be formulated: Why the regulations for the execution of civil case decisions that have legal force are still not fair, How are the weaknesses of the execution of civil case decisions that have permanent legal force, How is the reconstruction of execution regulations decisions in civil cases that have permanent legal force based on the value of justice.

## RESEARCH METHOD

This research belongs to the normative juridical research.<sup>6</sup> The nature of this research is descriptive analytical namely to provide data that is as accurate as possible about humans, circumstances or other symptoms.<sup>7</sup> The data used is secondary data. Data collection is done through literature study. The qualitative data analysis method used in this study resulted in descriptive analysis data. The data that was successfully collected both those obtained from secondary data, primary legal materials, as well as secondary<sup>8</sup> and tertiary legal materials were processed normatively by describing descriptively and prescriptively. The data is then analyzed interpretively using theory and positive law that has been poured then inductively drawn conclusions to answer the existing problems.<sup>9</sup>

## RESEARCH RESULTS AND DISCUSSION

### 1. Regulations on the Execution of Decisions in Civil Cases That Have Permanent Legal Forces which are not yet fair

There are a number of regulations governing the execution of civil case decisions that have permanent legal force which are considered not fair, especially for plaintiffs who expect the immediate implementation of court decisions that have permanent legal force, namely: HIR / RBg, Law Number 2 of 1986 in conjunction with Law Number 48 of 2009 concerning General Courts, Guidelines for Execution in District Courts, PERMA Number 3 of 2012 concerning Costs of Case Settlement Processes and Management at the Supreme Court and Judicial Bodies Under it.

#### Unbalanced Competence of the bailiff with his authority

Apart from checking; judge; and decide cases, the court is also authorized to implement court decisions in civil cases [Article 54 of Law no. 48 of 2009 and Article 195 Paragraph (1) HIR]. In general, the execution of civil disputes in Indonesia is regulated in HIR, RBg and Rv. The execution involved several first-level court officials, namely: the head of the court, the clerk and the bailiff.<sup>10</sup>

<sup>6</sup> Amiruddin dan Zainal Asikin, 2004. *Pengantar Metode Penelitian Hukum* Raja Grafindo Persada, Jakarta. p.30.

<sup>7</sup> Soerjono Soekanto. 2010. *Pengantar Penelitian Hukum*. UI Press: Jakarta. p. 12.

<sup>8</sup> Anis Mashdurohatun, Adhi Budi Susilo, Bambang Tri Bawono Copyright Protection Towards The Society 5.0, *Journal of Southwest Jiaotong University* / Vol.56 No.2 Apr. 2021, pp.398.

<sup>9</sup> Lexy J. Moleong, 1996. *Metodologi Penelitian Kualitatif*, Remaja Roskarya: Bandung. p.3.

<sup>10</sup> Irma Garwan, Ideal Execution of Civil, Cases Based on Principles of Justice to create a Simple and Low-cost Judiciary, *Journal of Humanities and Social Sciences Studies (JHSSS)*, 2(6) 2020:70-77.

The chairman of the court in his position (ex-officio) is the party authorized to lead and order the execution of civil disputes [Article 54 Paragraph (2) of Law no. 48 of 2009]. The authority is regulated in Article 195 Paragraph (1) HIR or Article 206 Paragraph (1) RBg, namely:

1. The authority to review the request for execution to see whether the request for execution can be executed or not;
2. The authority to order the bailiff to summon the defendant or the respondent for execution (hereinafter referred to as the respondent) to come to court to be warned to implement the decision voluntarily;
3. The authority to give warning (*aanmaning*) to the respondent to implement the decision voluntarily within a period of at least 8 days;
4. The authority to stipulate an execution order as the basis for carrying out the execution and to order the clerk and/or bailiff to carry out a forced execution if within a period of 8 days as referred to in number 3 the respondent does not carry out the decision voluntarily; and
5. The authority to supervise the execution [Article 54 Paragraph (1) of Law no. 48 of 2009].

Meanwhile, the role of the clerk in the execution of civil disputes is regulated in Article 54 Paragraph (2) of Law no. 48 of 2009, namely carrying out joint executions with the bailiff.

The assignment of the task of leading the execution to the head of the court of first instance has a direct impact on increasing the responsibilities of the chairman of the court in addition to deciding cases and leading the court. The jargon "the crown of the judge is a decision, and the crown of the head of the court is the execution of the decision" becomes a burden for a judge when he is appointed as chairman of the court. This is because the success of a chairman of the court in carrying out his duties as chairman of the court is not only seen from how he makes quality decisions, but also how he manages the court and provides public services to the community, including the number of executions of civil disputes that he has successfully carried out. This makes the head of the court's focus in working vulnerable to fragmentation.

Then in Article 39 of Law Number 2 of 1986 as amended and added to Law Number 49 of 2009 concerning General Courts, among other things, it is stated that in every district court there is a bailiff and a substitute bailiff. Meanwhile, Article 40 of Law Number 2 of 1986 in conjunction with Law Number 49 of 2009 states that in order to be appointed as bailiff, a candidate must meet the following requirements:

- a. Indonesian citizens
- b. Fear God Almighty
- c. Loyal to Pancasila and the 1945 Constitution of the Republic of Indonesia
- d. Diploma in secondary education
- e. Minimum 3-years experiences as a substitute bailiff
- f. Able to spiritually and physically to carry out duties and obligations.

To be appointed as a substitute bailiff, a person must meet the following requirements:

- a. The requirements as referred to in paragraph (1) letter a, letter b, letter c, letter d, letter f.
- b. Minimum experience of three (3) years as a civil servant in a district court.

Meanwhile, Article 65 of Law Number 2 of 1986 in conjunction with Law Number 49 of 2009 regulates the duties and responsibilities of a bailiff. This article states, among other things:

- 1) The bailiff is in charge of:
  - a. Carry out all orders given by the chairman of the session.
  - b. Deliver announcements, warnings, protests, and notification of court decisions based on the provisions of the Act.
  - c. Confiscate on the orders of the head of the district court.
  - d. Make a confiscation report, the official copy of which is submitted.

Referring to the task given by Law Number 2 of 1986 in conjunction with Law Number 49 of 2009 above to the bailiff, it can be seen that the bailiff has a role that is no less important than other officials in the court, considering that his function has been needed since the trial has not started to help smooth the process. trial and case administration, to the implementation of decisions. The task of execution is one of the many tasks of the bailiff, as well as the toughest task that requires the bailiff to deal directly with the respondent who often makes certain resistance in the field.

Meanwhile, referring to the authority and requirements to become a bailiff, it can be seen that there is an imbalance between the authority of the bailiff and the requirements and competence of the bailiff in Indonesia. The requirements to become a bailiff are still limited to administrative requirements that do not require an understanding of legal knowledge in the civil field or special expertise competence which is actually very necessary to be able to carry out a good execution. For this reason, it is necessary to adjust the requirements and competence of the bailiff with the authority of the bailiff to support the smooth execution of the execution.

The Supreme Court needs to provide additional training or certification with materials on banking law, capital market, intellectual property rights, and other branches of knowledge that are tailored to the needs of bailiffs in the field in carrying out executions.

Then considering that the execution must pay attention to the values of humanity and justice, the bailiff should also have certain competencies needed to respond to special conditions in the field with appropriate actions. One of the important competencies a bailiff has is the ability to negotiate. With this competence, the bailiff is expected to be able to make efforts to approach the respondent in advance so that they are willing to carry out the court's decision voluntarily.

### **HIR Doesn't Set Execution Request Terms**

Article 196 of the HIR stipulates that if the defeated party refuses or fails to comply with the contents of the decision voluntarily, then the winning party (plaintiff) submits a request for execution, either orally or in writing.

The necessity for such an application is based on the consideration that reconciliation or an agreement regarding how the decision is implemented can occur between the plaintiff and the defendant anywhere, both inside and outside the court.

Unfortunately, there is no standard format for the execution request and the documents that must be attached at the time of submitting the application.

The administrative requirements for an execution request should be strictly regulated in the Indonesian Civil Procedure Code, which include an obligation for the applicant to fill out an execution request form in a standard format and attach a copy of the final and binding decision requested for execution. The details of the form are further regulated in an internal regulation of the Supreme Court which at least contains information regarding: (a) the identity of the parties; (b) the number and date of the decision requested for execution; (c) the form of punishment based on the decision requested for execution, information on whether or not there is a confiscation of collateral; (d) a list of assets subject to confiscation (if any); (e) a list of property/assets belonging to the respondent of execution known to the applicant (if any); and (f) a brief description of the efforts made by the applicant so that the respondent implements the decision voluntarily and the results. The form must be available on the court's website and can be downloaded directly free of charge.

### **HIR does not regulate the party charged with paying the down-payment fee**

Then related to the down payment, HIR does not regulate the down payment. This absence of a legal basis means that in practice all execution costs are borne by the applicant as the party deemed interested in carrying out the execution. The imposition of an execution fee on the applicant is certainly very detrimental to the applicant because in addition to the execution action was carried out not on the fault of the applicant, but due to the respondent's refusal to carry out the decision voluntarily, this system makes the applicant pay no small amount of money, there is even no guarantee that the execution process will be completed quickly.

HIR only stipulates that execution costs are taken from assets that have been auctioned off as regulated in Article 197 of HIR. According to M. Yahya Harahap, this down payment is interpreted by analogy to Article 121 Paragraph (4) HIR or Article 145 paragraph (4) RBg.<sup>11</sup> The article stipulates that the recording of a lawsuit into the register book may not be carried out if the amount of money which will be calculated in the future has not been paid, the amount of which will be temporarily estimated by the head of the court according to the circumstances for the fees for the clerk's office and the costs of making all summons and notifications required to both parties and the price of the stamp to be used. The court interprets this article by analogy and applies this provision to the implementation of the decision on the grounds that the execution fee is an inseparable continuation of the court fee.<sup>12</sup> This is also inseparable from the assumption that execution is an inseparable series or an integral part of the process of examining and adjudicating cases.<sup>13</sup>

Regulation of the Supreme Court Number 3 of 2012 concerning Costs of the Case Settlement Process and its Management at the Supreme Court and the Judicial Bodies Under it stipulates that the components of the cost of the case settlement process, from registration to evaluation of the implementation of the settlement of civil cases include costs for: (a) stamp duty ; (b) editors; (c) office stationery; (d) duplication of case files and documents; (e) trial consumption; (f) duplicating copies of decisions; (g) sending notification of the register number to the court of application and the parties; (h) filing and binding of minutes of case files; (i) case settlement fees; (j) incentives for the process cost management team; (k) filing of case files; and (l) monitoring and evaluation of case settlement.

The amount of the down-payment of the process fees at the court of first instance is regulated and determined by the head of the court of first instance, based on the circumstances or geographical conditions of the court, so that the amount varies for each court.

### **HIR doesn't regulate execution fee payment timing**

In practice, 4 different practices were found regarding the execution time of down payment. First, it was found that the court applied the down payment for the execution together with the Power of Attorney to Pay (SKUM) and ordered the applicant to pay for the execution after receiving the application. Desk III officers will only record the execution request in the register book and the Case Search Information System (SIPP) after the applicant has deposited the down payment for the execution. Second, it was also found that the court requested the down payment for the execution and registered the request for execution after the head of the court issued the order of execution. Third, it was also found that the court applied the down payment for the execution in stages as per the Execution Guidelines at the District Court. The first stage for *aanmaning*; the second stage is for confiscation of executions (if the respondent does not voluntarily carry out the execution and there are goods to be confiscated) and the third stage is for executions in the field. Fourth, it was also found that courts applied the down payment of executions all at once, and some even paid the security fee at the same time. Although the general courts already have Execution Guidelines at the District Courts which contain guidelines regarding the timing of the payment of down-payment fees, in practice there are still variations in the application of the down-payment of executions.

Ideally, the payment of execution fees in Indonesia is divided into 2 stages, namely: (a) the administrative stage; and (b) the execution stage. The administrative stage starts from the registration of the application until the issuance of the determination of the execution order. Meanwhile, the execution stage starts after the execution order is issued until the execution is complete.

Payment of the administrative stage fee is made when the applicant submits an execution request which this fee will be reimbursed from the results of the auction of the respondent's goods.

Meanwhile, the payment of the cost of the execution stage is carried out after the issuance of the order of execution by the head of the court. The cost of the execution stage is calculated from expenses that actually occur in the field, where the amount is uncertain/non-uniform for each case so it must be applied in actual cost.

With a financing pattern based on the stages as above, the applicant does not have to pay for the entire execution process when registering an execution application.

<sup>11</sup> M.Yahya Harahap 2016. *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, second edition, Jakarta: Sinar Grafika, p. 382.

<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid* p. 377.

### **HIR doesn't set the timeframe for the implementation of the *aanmaning* session**

The Civil Procedure Code does not stipulate when a security trial must be held so that it has an impact on the uncertainty of the time needed to carry out the execution. In practice, the duration of the *aanmaning* trial is still different in the District Court, starting from 2 weeks from the time the request for execution is received; 3 weeks since the execution request is received; and even up to 1 month or more since the execution request is received. The Execution Guidelines at the District Court made a breakthrough by clearly stipulating this, namely that the execution of security is carried out no later than 30 working days from registration.

### **HIR does not regulate the party tracing the respondent's assets**

Asset tracing is closely related to execution seizures. Article 197 of the HIR only states that the court will confiscate the property belonging to the respondent. However, there is no rule regarding who should seek information about the respondent's property (assets). This raises uncertainty whether tracing the assets is the obligation of the court as the party carrying out the confiscation of execution, or the applicant as the party with an interest in the confiscation of the execution, or the respondent as the party who should carry out the decision.

### **HIR does not regulate the obligation to register and announce the confiscation of execution of movable property**

The Civil Procedure Code has not regulated the obligation to record and announce the confiscation of execution of movable property, so that the public is aware of the confiscation. This condition makes it easy for the respondent to transfer the goods because the party receiving the transfer does not know about the confiscation of the goods. In addition, the field study found that the execution of movable property in court often encountered obstacles and was even declared a failure because the object had been transferred by the party who controlled it.

Therefore, there needs to be a regulation that requires the recording of movable goods that are subject to execution confiscation to the relevant institutions that have blocked or confiscated. This record will be used by the institution to prevent the owner from transferring movable goods that have been confiscated for execution to another party.

### **HIR does not regulate the prohibition of other parties from transferring goods that have been confiscated by execution**

Article 199 Paragraph (1) HIR stipulates that the respondent is prohibited from transferring the goods that are subject to execution confiscation since the minutes of the execution confiscation are available. However, this prohibition should not only apply to the respondent because there is a potential for the goods subject to confiscation to be controlled by another party. Thus, it is necessary to change the rules regarding the subject that is prohibited from transferring confiscated goods, from only the respondent to every person or party who controls the goods.

### **HIR does not regulate the inspection of the respondent's goods in the execution of paying a sum of money**

Article 197 Paragraph (1) HIR states that the goods that are prioritized to be confiscated are movable goods and will only be forwarded to immovable goods if the estimated value of the movable goods will not be sufficient, until the value is deemed sufficient to replace the amount of money that must be paid by the respondent.

Unfortunately, there are no rules regarding the inspection of the respondent's goods, both movable and immovable, which are subject to execution confiscation. In practice, if the confiscation is carried out on immovable property, such as land, the judge is encouraged to conduct a local examination to obtain more detailed information regarding the land to be confiscated as the object of execution.

### **HIR does not clearly regulate the party that keeps the confiscated goods from execution**

After the respondent's goods are confiscated and valued, these goods must be maintained so that their value does not decrease when sold. For this reason, it is necessary to determine where the goods must be placed and who is obliged to maintain the goods. Regarding this matter, Article 197 Paragraph (9) of the HIR essentially stipulates that movable goods subject to confiscation of execution remain under the control of the respondent or place the said goods in an adequate place. If the goods are under the control of the respondent, the confiscation must be notified to the village police or village police and the police must ensure that the goods are not transferred. As for immovable property, it must remain at the location of confiscation.

Unfortunately, there are no clear rules regarding who is obliged to maintain, including safeguarding, the confiscated goods. In Article 197 Paragraph (9) of the HIR above, the only party who is required to keep the goods confiscated from the execution is the village police or the village police in the condition that the property is in the possession of the respondent. However, there are no rules that explain who the so-called village police or village police are, especially when adjusted to current conditions.

In addition, the article also does not explain who is obliged to keep the goods confiscated from execution if the goods are movable goods placed in adequate places and immovable goods which remain at the confiscation location. Thus, there are no clear rules regarding who is required to guard the confiscated goods, whether movable goods controlled by the applicant, placed in an adequate place, or immovable property that remains at the confiscation location.

## 2. Regulations on the Execution of Decisions in Civil Cases That Have Permanent Legal Force Based on the Theory of Justice

Pancasila as the way of life of the Indonesian people is a source of justice in national law (*filosofische grondslag*) and will continue to be maintained because it is considered in accordance with the moral values of the Indonesian nation.

In the juridical construction of justice based on Pancasila, it is based on a balance between justice itself, legal certainty and benefits for conflict resolution in interactions between legal subjects. The meaning of the balance between justice and legal certainty and benefit is oriented towards the realization of welfare. This is understood as the needs of the Indonesian people, both spiritual and physical. Juridically this, of course, refers to the extent to which the law is capable of providing benefits to the community.<sup>14</sup>

In relation to justice based on Pancasila, Mochtar Kusumaatmadja stated that in a state of law (rule of law) for the Republic of Indonesia, it must adhere to the principles and concepts of Pancasila contained in the Preamble to the 1945 Constitution of the Republic of Indonesia, as the basis for realizing legal justice and social justice. The basis in question is as follows:

- a. The principle of God (mandating that there should be no anti-religious national law product).
- b. Humanitarian principles (mandating that national law must guarantee and protect human rights).
- c. Principles of Unity and Unity (mandating that Indonesian law must be a national law that applies to the entire Indonesian nation, functioning as a unifier of the nation).
- d. Principles of Democracy (mandating that power must be subject to just democratic laws).
- e. Principles of Social Justice (mandating that all citizens have the same rights that everyone is equal before the law).<sup>15</sup>

The value of justice and its meaning for legal certainty and benefits that must be balanced are the basic values of the Pancasila ideology. For this reason, an understanding of Pancasila as the basis of the theory of justice is recommended to use two approaches. This approach is intended to gain a complete and thorough understanding of Pancasila. The approach is a juridical-constitutional approach and a comprehensive approach.<sup>16</sup>

A juridical-constitutional approach is needed in order to increase awareness of the role of Pancasila as the source of all sources of law, and therefore bind the entire Indonesian nation and state to implement it. The implementation of Pancasila presupposes the growth and development of understanding, appreciation and practice in our daily lives individually and socially as Indonesian citizens.

A comprehensive approach is needed to understand the various functions and positions of Pancasila which is based on the historical and juridical-constitutional values of Pancasila<sup>17</sup>: as the basis of the state, ideology, teachings on cultural values and way of life of the Indonesian nation. The study was carried out with the consideration that apart from being a *philosophische grondslaag* (Dutch), the basis of the state philosophy of the Republic of Indonesia, Pancasila is also a unified nation's philosophical system or way of life.<sup>18</sup>

As the basis of the balance between justice, legal certainty and usefulness in Pancasila, it can be observed from a historical perspective, as the basis of historical interpretation<sup>19</sup> which is the basis of thought and orientation of Indonesia's founding fathers.

The ideal of justice as the ideal of Indonesian law, has received important discourses on justice and social justice. Fair and justice are recognition and balanced treatment between rights and obligations. If there is a balanced recognition and treatment of rights and obligations, automatically if we recognize the "right to life", then on the contrary must defend the right to life by working hard, and the hard work that is done does not cause harm to others, because other people also have the same rights (right to life) as the rights that exist in individuals. By accepting the concept of recognizing the rights of others, it will automatically give everyone the opportunity to defend their rights.<sup>20</sup> This concept describes the precepts of a just and civilized humanity, fellow human beings in community groups will respect, respect, and protect the basic rights of others, so that the Indonesian nation can be known as a nation that respects the rights of others and as a civilized nation.

The relationship between fair and civilized is analogous to light with fire, if the fire is big, the light will also enlarge and the surroundings will be bright. So if the civilization of the Indonesian nation is high, the value of justice will be higher." The word "social justice, must be associated with social relations, social justice can be interpreted as follows.

- a. Return the lost rights to the rightful.
- b. Eradicating persecution, fear, and deprivation of rights
- c. Realizing equality against the law between every individual, businessman, and luxury people that he gets unreasonably.<sup>21</sup>

As it is known that justice and injustice cannot be separated from life and social life. In everyday life, people often encounter people who take the law into their own hands, in fact the act is the same as the act of achieving justice which results in injustice, especially the person being judged.

Aristotle stated: "Justice consists in treating equals equally and unequals unequally, in proportion to their inequality". Based on the scientific analysis carried out, Aristotle distinguishes justice into 2 (two) kinds.

- a. Distributive justice (*justitia distributiva*) is a concept that provides justice to each based on the size of the service or distribution according to their rights. Distributive justice is very important to be applied in the social life of the community and plays a role in the relationship between the community and individuals. The definition of justice here does not mean equality but comparison.

<sup>14</sup> Otje Salman Soemadiningrat dan Anthon F. Susanto. 2014. *Teori Hukum (Meningkat, Mengumpulkan Dan Membuka Kembali)*, Bandung : Refika Aditama, g. 156-157.

<sup>15</sup> Mochtar Kusumaatmadja. 1972. *Pembinaan Hukum Dalam Rangka Pembangunan Nasional*. Bandung : Bina Citra, p. 11.

<sup>16</sup> *Ibid.*

<sup>17</sup> Maemunah, Anis Mashdurohatun, Legal Reconstruction of Human Resource Standards in Providing Social Welfare Based on Pancasila Justice, *Journal of Xidian University*, Volume 16, Issue 2, 2022, pp.559-568.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Suhrawardi K. Lubis. 2000. *Etika Profesi Hukum*. Jakarta : Sinar grafika. P. 50

<sup>21</sup> Kahar Mansyur. 1985. *Membina Moral dan Akhlak*, Kalam Mulia, Jakarta. p. 71

- b. Cumulative justice (*justitia komulativa*) or corrective justice. Cumulative justice (*justitia komulativa*) is a justice that is based on equal rights, not on the size of services.

Understanding the general notion of justice, Hampshire put forward his theory of justice by referring to the nature of the rule of law, thus giving birth to 2 types of justice, namely procedural justice and substantive justice. When we examine the theory of justice put forward by Hampshire. So procedural justice and substantive justice can essentially be categorized in distributive justice. Therefore, at the level of implementation of procedural justice and substantive justice must run parallel.

Execution is a series of judges' decisions which is the end of the civil case process. The judge's decision concerns the rights and obligations of the parties to the dispute.

Execution itself is basically carrying out the judge's decision by the court in a case that was initially examined by a District Court Judge, which was carried out on orders and with the leadership of the Head of the District Court who first examined the case, according to the method regulated by law.

The completion of the case examination until the judge's decision is handed down is not the end of the civil case process, but the most important thing is whether the decision can be executed in the sense that the rights of the winning party contained in the decision can be implemented properly.

The decision is not enough to be written on paper but must be implemented (executed). A court decision is meaningless if it cannot be implemented.

The party responsible for implementing the decision in a civil case is the Head of the District Court, who first handed down the decision. As the party responsible for the implementation (execution) of civil case decisions, the Head of the District Court must ensure the execution of the decision by resolving all obstacles and obstacles in the implementation of the decision.

If the losing party does not want to carry out the obligations set out in the decision, then he can be forced to fulfil his obligations with the help of the court. This means that the court can enforce the implementation of the decision by force on the party who lost the case, with the help of security tools.

In practice, the execution of court decisions is often faced with many obstacles. Not a few have dragged on the execution process due to various factors, including weaknesses in the legal substance.

Justice must substantively refer to the measure of equality and freedom. First, is the principle of greatest equal liberty. Through this principle everyone has an equal right to the entire system composed of freedoms and which are compatible with them. Second, fair equality of opportunity (the principle of fair equality of opportunity). The essence of the principle of fair equality of opportunity refers to those who have the least opportunity to achieve prosperity, income and authority prospects. To create equality, the difference principle is needed, namely that social and economic differences must be regulated in order to provide the greatest benefit to those who are the least fortunate.

Rawls' procedural justice consists of three kinds. In addition to perfect procedural justice, there are also two other types, namely: imperfect procedural justice and pure procedural justice. Perfect procedural justice refers to the availability of procedures that have previously been well designed, but the final result may be different from the original design. The pure procedural justice departs from the absence of independent criteria that precede a procedure, and what is needed is the process of formulating a true and fair concept of justice to ensure a true and fair final result. In the perspective of national law, law and justice cannot be separated from the roots of Indonesian culture. A nation that is ideologically based on the philosophy of Pancasila. Sudjito emphasized that a national law will favor justice if it is supported by a holistic law that refers to Pancasila.

There are a number of execution regulations in civil cases below that have not provided justice for the applicant or third parties, which must be reconstructed by the value of justice for the regulation of execution of decisions in civil cases in order to contain the value of justice.

1. The pattern or system that stipulates that all execution costs are borne by the applicant as the party deemed interested in carrying out the execution, is clearly an injustice and is detrimental to the execution applicant because apart from the execution, it was not the applicant's fault, but was the result of the respondent's unwillingness to carry out the decision voluntarily. This pattern or system needs to be reconstructed so that the applicant does not incur costs in applying for execution.
2. In addition, if the object executed is not in accordance with the items stated in the decision, the decision cannot be executed. This is also unfair to the applicant and should not be used as a reason for not carrying out the execution, considering that the problem can occur due to several things that are beyond the control of the parties, such as changes in street and district/city names that cause the address of the object of execution to be incorrect, or natural disaster that causes the boundary or condition of the object of execution to be different from that stated in the decision. In this regard, there needs to be a rule regarding the mechanism that can be carried out so that the object of execution is unclear or has changed its condition, especially due to factors beyond the control of the parties. still executable.
3. Then third parties will also experience losses and injustices because civil procedural law does not regulate the mechanism that must be taken, both by the court, the parties and related third parties, if the object of execution relates to the rights of third parties that are not related to the case, as in the cases above. This condition creates an unclear mechanism that can be used, both by the applicant, and by third parties, to defend their respective rights to objects at the execution site. In addition, this condition creates uncertainty whether the execution should still be carried out or should be postponed until the third-party rights issue is resolved.
4. Furthermore, regarding the Forced Agency or *Gijzeling* which is regulated in PERMA No. 1 of 2010 which resulted in the execution being longer and more expensive. The existence of *gijzeling* implementation costs certainly adds to the burden of execution costs that must be incurred, moreover the burden must be borne by the applicant. Even if the fee is paid in advance by the applicant and will be reimbursed from the sale of the respondent's property, of course this is logically impossible, considering that the *gijzeling* itself is carried out because there are no more items from the respondent that can be sold to pay money to the applicant, so it is impossible for any more goods to be sold. sold to cover the cost of *gijzeling*.

### 3. Regulations on the Execution of Decisions in Civil Cases That Have Permanent Legal Force Based on Legal Protection Theory

Involuntary execution of decisions creates more economic, time and moral losses. However, the law allows the execution of certain legal forms which are equated with court decisions.<sup>22</sup> This emphasizes that in certain cases, execution does not always have to be preceded by a lawsuit.

In accordance with Article 196 of the Herzien Inlandsch Reglement (HIR), if the losing party does not want to carry out the decision voluntarily, then the winning party can request assistance from the court to enforce the execution of the decision. This is important to do in an effort to get their rights that have been fought for through court decisions that have permanent legal force. Therefore, the execution regulation in civil cases must provide protection to the applicant and even third parties related to the object of execution.

Fitzgerald explained the theory of legal protection, that the law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand. The interest of the law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection born of a legal provision and all legal regulations provided by the community which are basically an agreement by the community to regulate behavioural relations between community members and between individuals and the government which are considered to represent the interests of the community.<sup>23</sup>

According to Satijipto Raharjo, legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Law can be functioned to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.<sup>24</sup>

Below are the execution regulations in civil cases that create a norm ambiguity and there is even a norm vacuum, so that it has not provided adequate protection for the plaintiff to immediately obtain his rights based on a court decision that has permanent legal force, namely:

1. Article 196 HIR does not have rules on the standard format of the request for execution and the documents that must be attached at the time of submitting the application. The administrative requirements for an execution request should be strictly regulated in the Indonesian Civil Procedure Code, which include the obligation for the applicant to fill out an execution request form in a standard format and attach a copy of the final and binding decision requested for execution. The details of the form are further regulated in an internal regulation of the Supreme Court which at least contains information regarding: (a) the identity of the parties; (b) the number and date of the decision requested for execution; (c) the form of punishment based on the decision requested for execution, information on whether or not there is a confiscation of collateral; (d) a list of assets subject to confiscation (if any); (e) a list of property/assets belonging to the respondent of execution known to the applicant (if any); and (f) a brief description of the efforts made by the applicant so that the respondent implements the decision voluntarily and the results. The form must be available on the court's website and can be downloaded directly free of charge.
2. Although the general courts already have Execution Guidelines at the District Courts which contain guidelines regarding the timing of the payment of down-payment fees, in practice there are still variations in the application of down payment executions. The Civil Procedure Code does not regulate and does not provide a way out regarding decisions which is not clear. Therefore, in practice, the solutions taken by the courts when faced with this matter are also different, namely: a. Advise the applicant to file an appeal or PK. b. Advise the applicant to file a new lawsuit. c. Advise the applicant to file a special lawsuit for changes to the verdict. d. Asking for instructions to the high court or the Supreme Court. e. Reject the request for execution and establish a non-executable decision. Inconsistency in responding to unclear decisions can lead to lack of legal certainty and can reduce public confidence in the courts.
3. The Civil Procedure Code does not stipulate when a security trial must be held so that it has an impact on the uncertainty of the time needed to carry out the execution.
4. Although the Execution Guidelines at the District Court open up the possibility of more than 1 trial of *aanmaning*, but the guidelines do not regulate the distance between the first *aanmaning* trial and the next, and under what conditions the trial of *aanmaning* can be held more than once. For the sake of legal certainty, it is necessary to stipulate in the Civil Procedure Code that the trial can be held at most twice, and the second trial is only allowed if the respondent is unable to attend for clear reasons and the distance between the first and second trials cannot be more than 7 working days.
5. Article 197 of the HIR does not stipulate the party that must conduct a search on assets related to the confiscation of execution. This raises uncertainty whether tracing the assets is the obligation of the court as the party carrying out the confiscation of execution, or the applicant as the party with an interest in the confiscation of the execution, or the respondent as the party who should carry out the decision.
6. The Civil Procedure Code has not regulated the obligation to record and announce the confiscation of execution of movable property, so that the public is aware of the confiscation. This condition makes it easy for the respondent to transfer the goods because the party receiving the transfer does not know about the confiscation of the goods. In addition, the field study found that the execution of movable property in court often encountered obstacles and was even declared a failure because the object had been transferred by the party who controlled it. have been blocked or confiscated. This record will be used by the institution to prevent the owner from transferring movable goods that have been confiscated for execution to another party.
7. Article 199 Paragraph (1) HIR has stipulated that the respondent is prohibited from transferring goods that are subject to execution confiscation since the minutes of the execution confiscation are available. However, this prohibition should not

<sup>22</sup> Yahya Harahap 1988. *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Jakarta : Gramedia, p. 8

<sup>23</sup> *Ibid.* p. 54

<sup>24</sup> *Ibid.* p. 55

only apply to the respondent because there is a potential for the goods subject to confiscation to be controlled by another party. Thus, it is necessary to change the rules regarding the subject that is prohibited from transferring confiscated goods, from only the respondent to every person or party who controls the goods.

8. Article 197 Paragraph (1) HIR states that the goods that are prioritized for confiscation are movable goods and will only be forwarded to immovable goods if the estimated value of movable goods will not be sufficient, until their value is deemed sufficient to replace the amount owed by the respondent. Unfortunately, there are no rules regarding the inspection of the respondent's goods, both movable and immovable, which are subject to execution confiscation. In practice, if the confiscation is carried out on immovable property, such as land, the judge is encouraged to conduct a local examination to obtain more detailed information regarding the land to be confiscated as the object of execution.
9. There are no general rules regarding who is authorized to examine and evaluate goods confiscated from executions, especially goods whose prices are not visible and are subject to change. Article 197 Paragraph (1) HIR seems to give such authority to the clerk as the executor of the execution confiscation. However, specifically for land, the Execution Guidelines at the District Court stipulates that the determination of the land limit price is carried out by a public appraiser (appraiser) whose results are determined by the head of the District Court where this assessment can only be carried out if the respondent fails to sell his land within 2 months. This condition makes it unclear who is actually the authorized party to examine and assess the goods confiscated from execution.
10. Article 197 Paragraph (9) HIR essentially stipulates that movable goods subject to execution confiscation remain under the control of the respondent or place the said goods in an adequate place. However, it does not regulate who is obliged to maintain, including guarding, the goods confiscated from execution. Because in this provision it is mandatory to guard the village police or village police, so it is not clear who the party referred to as village police or village police is, especially if it is adjusted to current conditions.

Reconstruction of the value of justice in the regulation of the execution of civil cases is by providing certainty and justice for applicants for execution, and reconstruction of norms for the execution of civil cases so that it is based on justice, namely: Article 40 paragraph (1) Law Number 2 of 1986 in conjunction with Law Number 49 of 2009 concerning General Courts and several articles in the HIR, namely: Article 196 paragraph (1), Article 196 paragraph (2), Article 196 paragraph (2), Article 196 paragraph (2) A, Article 196 paragraph (2) B, Article 197 paragraph (1), Article 197 paragraph (1) A, Article 197 paragraph (1) B and Article 197 paragraph (9). Then the need to establish a special Institution/Division at the District Court or High Court level that handles Confiscation and Execution.

## CONCLUSION

Execution regulations in civil cases that have legal force are still not fair, because there are injustices and legal uncertainties related to a) Executors of executions, b) Requests for execution, c) Summons and bail, d) Execution of payments of a sum of money, and e) Real executions. Some of the execution regulations in HIR/RBg are no longer compatible with the values of the Indonesian nation and the development of modern society, so there is an urgent need for reconstruction to provide justice and legal protection for justice seekers. Weaknesses in the execution of civil cases that have not been fair, are caused by the weakness of the legal substance in HIR contained in Article 196 paragraph (1), Article 196 paragraph (2), Article 196 paragraph (2), Article 196 paragraph (2) A, Article 196 paragraph (2) B, Article 197 paragraph (1), Article 197 paragraph (1) A, Article 197 paragraph (1) B and Article 197 paragraph (9). And Article 40 paragraph (1) of Law Number 2 of 1986 in conjunction with Law Number 49 of 2009 concerning General Courts. The weakness of the legal structure consists of the heavy burden of duties and responsibilities of the Head of the District Court, the lack of support from the Government and the Legislator for civil procedural law reform. Meanwhile, the weakness of legal culture/culture, namely the respondent's efforts to slow down and avoid executions. and from the applicant's side, because of the large execution costs. Reconstruction of the value of justice in the regulation of the execution of civil cases, namely providing certainty and justice for applicants for execution, and reconstruction of norms for the execution of civil cases so that it is based on justice, namely: Article 40 paragraph (1) Law Number 2 of 1986 in conjunction with Law Number 49 of 2009 concerning General Courts and several articles in the HIR, namely: Article 196 paragraph (1), Article 196 paragraph (2), Article 196 paragraph (2), Article 196 paragraph (2) A, Article 196 paragraph (2) B, Article 197 paragraph (1), Article 197 paragraph (1) A, Article 197 paragraph (1) B and Article 197 paragraph (9). Then the need to establish a special Institution/Division at the District Court or High Court level that handles Confiscation and Execution.

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