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STUDY OF ARRANGEMENTS URGENCY FOR THE EXECUTION OF CASE COSTS IN CIVIL CASES

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ABSTRACT

Settlement of civil disputes in court is an effort to defend rights of a person controlled by another party. Settlement of this dispute begins with filing a lawsuit to the Court, either with or without consent of the party being sued. The lawsuit process begins with the registration of a lawsuit to Court, which can only be done if the plaintiff has paid the court fee down payment. The obligation to pay court fees down payment is regulated in Article 121 paragraph (4) *Herziene Inlandsch Regulation (HIR)*, which is formulated: "Registration of a lawsuit in the case register book can only be carried out after the plaintiff has paid the court fee. If stipulated case fee has been paid, the plaintiff has the right to register the lawsuit and the clerk must register it in the case register book. Case costs in civil case trials through the courts are borne by losing party based on the Court's decision. However, the Court's decision was not implemented by Registrar, on the grounds that winning party did not submit an application for execution. In addition, there is no or no provision governing the execution of court decisions regarding the payment of court fees. As a result, the winning party is harmed, both materially and immaterially. Therefore, rules regarding the execution of court fee payment decision should be issued immediately, at least through a Supreme Court Regulation.

KEY WORDS

Urgency, civil cases, execution, Supreme Court.

Settlement of civil disputes in court is an effort to defend rights of a person controlled by another party. Settlement of this dispute begins with filing a lawsuit to the Court, either with or without consent of the party being sued. The lawsuit process begins with the registration of a lawsuit to Court, which can only be done if the plaintiff has paid the court fee down payment. The obligation to pay court fees down payment is regulated in Article 121 paragraph (4) *Herziene Inlandsch Regulation (HIR)*, which is formulated: "Registration of a lawsuit in the case register book can only be carried out after the plaintiff has paid the court fee. If stipulated case fee has been paid, the plaintiff has the right to register the lawsuit and the clerk must register it in the case register book.

The obligation to pay court fees as a condition for a lawsuit to be registered in the case register book is also regulated in Article 145 paragraph (4) *Reglement Buitengewisten (RBg)*. In this clause it is formulated: "Recording in the register as referred to in paragraph (1) is not carried out before the clerk is paid an amount of money as an advance which will be calculated later by the Chairperson of the District Court". For this purpose, a provisional budget has been drawn up regarding clerkship fees, summons and notifications to the parties as well as the necessary seals.

According to Article 181 paragraph (1) *HIR* and 192 *RBg*, case costs are borne by the losing party. If the plaintiff's claim is granted in full, then the defendant is on the losing side, so the judge must bear the costs of the case to the defendant, and vice versa. Furthermore, Article 183 *HIR* stipulates: "The amount of court fees imposed on one of the parties must be stated in decision. This rule also applies to the amount of fees, losses and interest money imposed on one party to be paid to the other party".

The imposition of court fees on the losing party, as stipulated in provisions of Article 192 *RBg*. At the same time, it is a form of punishment for the losing party in a lawsuit. However, this decision is actually unrealistic and violates the principle of justice. Because the



losing party, who has lost his rights, is still burdened with the obligation to pay court fees. Case costs should be borne by plaintiff, whatever the reason; the plaintiff must bear the court costs. If the plaintiff loses in court and has to pay court fees, of course it is very realistic, because the plaintiff has disrupted civil rights of defendant. On the other hand, if plaintiff wins the case and has to pay court fees, it will also be more realistic and in accordance with the principles of justice, because the plaintiff has obtained his civil rights, as expected, whose value is greater than the cost of the case.

In addition to principle of imposing court costs on the losing party, the imposition of case costs is also based on the principle of balance, in this case it is borne equally by the parties (*plaintiff and defendant*). The principle of charging case costs in a balanced manner is carried out if the plaintiff's victory or the defendant's victory is not absolute. This means that final decision of the Court grants or rejects part of the lawsuit. Such a decision is referred to as a decision that is not absolute.

Regarding the amount of court fees, *HIR* and *Rbg* does not regulate and does not specify explicitly. Article 183 *HIR*, only parties must be mentioned in the decision". According to Yahya Harahap, in addition to the Court's decision, it includes the principal case, it also includes the costs of the case.

Regarding the amount of court costs, losses and interest are not the same between each case. This is regulated in Article 182 *HIR*, which only states: "Details of the things that can be charged. Types of expenses outside the details may not be included in the court fee. Determination of the amount of court fees must be based on the existing or to be determined rate by the Ministry of Justice (Ministry of Law and Human Rights), or if there is none, based on an estimate through the decision of the Head of Court regarding the amount of the case down payment".

The amount of court fees is temporary because there may be a shortage or surplus when the judicial process ends. If the case has been decided by the court, it turns out that there are remaining down-payment costs for the case, then the court must return the remaining down-payment to the plaintiff. If not, then the plaintiff is obliged to add to these costs.

Article 182 *HIR* states details of matters that may be charged, and types of expenses outside the details that may not be included in the court fee. Determination of the amount must be based on the existing rate or that will be determined by the Ministry of Justice (*Ministry of Law and Human Rights*), or if not, based on the decision of the Chairperson of the court regarding the down payment of case fees. Yahya Harahap explained that in addition to the Court's decision, regarding the main points of the case, also mentioning the amount of the cost of the case.

Case costs or case costs are a combination of expenses for case fees and expenses for other costs for litigation purposes. Types of expenses outside the details may not be included in the court fee. Determination of the amount must be based on the existing or to be determined rate by the Ministry of Justice, or if there is none, based on the judge's estimate. In addition to the decision including the main points of the case, it also included the amount of court fees. According to Article 183 *HIR*, the amount of case fees, imposed on one of the parties must be stated in the decision. This rule also applies to the amount of fees, losses and interest money imposed on one party to be paid to the other party.

The provisions of Article 183 *HIR* implicitly imply that the imposition of court fees on the losing party is the authority of the judge who examines and decides on the a quo case. The amount of court fees consists of several components of costs, the details and types of which are determined in Article 182 *HIR* contained in Chapter IX Regarding Trying Civil Cases that Must Be Examined by the District Court, Part III Concerning Deliberations and Decisions, which basically states the details of the costs that may be borne by the losing party.

If there are other expenses other than those specified in Article 182 of the *HIR*, then both the amount and type of expenses that are outside the details mentioned above may not be included in the case fee. Meanwhile, regarding the determination of the type and amount of court fees to be charged to the losing party, it must be based on the existing rate or that will be determined by the Ministry of Justice (Kemenkum HAM), or if there is none, then the



calculation is based on an estimated value taking into account the feasibility and adjust to the conditions in which the trial is held.

In Article 182 HIR there is a provision which is formulated in the sentence "... may include no more". Interpretatively, the cost components are limited and may not exceed the cost components specified in Article 182 HIR. The components of the court costs mentioned in Article 182 of the HIR are not always used to calculate court costs, meaning that in certain cases, some of these cost components can be omitted. For example, local examination fees, or oath-taking fees, are not always attached to every case, so they don't need to be taken into account. The real cost of the case is calculated and charged, limited to the components that are really attached to the case examination process.

Furthermore, regarding the calculation amount of court fees regulated in Article 182 HIR and Article 193 RBg according to Yahya Harahap based on several principles, that is :

- Based on tariffs or price lists, for stamp duty or transportation costs, it can be guided by existing rates or price lists in accordance with the development of fluctuations that occur;
- Based on the stipulation of the Minister of Justice, this stipulation is based on the fee provisions stipulated by the Minister of Justice;
- Based on the judge's estimate, that is, if rates and price lists do not exist or are available but do not correspond to reality, the Minister of Justice has not issued or has not issued provisions regarding this matter, or these provisions are not in accordance with the actual situation, then the costs of case are based on estimates or estimates, carried out objectively and realistically, and guided by appropriate and human decency.

The amount of case fees at District Court, is regulated in Article 2 paragraph (3) of the Supreme Court Regulation Republic of Indonesia Number 03 year 2012 concerning the Process of Settlement of Cases and Their Management at the Supreme Court and Judiciary bodies Under it, stipulates that: "The amount down payment fees proceedings at the Court First Instance are regulated and determined by the Chairperson Court of First Instance in accordance with the provisions of applicable laws and regulations". The details regarding the details of case fees are determined in stages as stipulated in the provisions of Article 2 of Perma No.03 of 2012, as follows:

1. The amount of the processing fee at the Supreme Court is determined as follows:
 - Cassation on civil, civil, religious and state administrative cases in the amount of IDR 500,000 (five hundred thousand rupiah);
 - Judicial review of civil, civil religious and state administrative cases in the amount of IDR 2,500,000 (two million five hundred thousand rupiah);
 - Cassation on commercial civil cases in the amount of IDR 5000,000 (five million rupiah);
 - Review of commercial civil cases in the amount of IDR 10,000,000 (ten million rupiah);
 - Cassation on Industrial Relations Cases with a value of Rp. 150,000,000.- (one hundred and fifty million rupiah) and above Rp. 500,000.- (five hundred thousand rupiah);
 - Review of Industrial Relations Cases where the value of the claim is IDR 150,000,000 (one hundred and fifty million rupiahs) and above IDR 2,500,000 (two million five hundred thousand rupiahs);
 - Application for Review of Legislation under the law (objection of right of judicial review) in the amount of Rp. 1,000,000, - (one million rupiah).
2. The amount of the examination fee at the appellate level is IDR 150,000 (one hundred fifty thousand rupiah), except for the State Administrative High Court of IDR 250,000 (two hundred and fifty thousand rupiah);
3. The amount of the processing fee at the first level is regulated and determined by the Chairperson of the Court of First Instance in accordance with the applicable laws and regulations.



Regarding the payment of court fees, it is carried out based on the Supreme Court Circular Letter Number 04 of 2008 concerning Collection of Case Fees. In point 1 it is stated that: "The case fee that must be paid by the litigating parties must be carried out transparently in accordance with provisions made by the Chairperson in the First Level Court, the Chairperson Court of Appeal, and Chief Justice of the Supreme Court. While the payment of fees for civil, civil and religious cases and state administrative cases must be paid by the litigants through the bank, it is not justified for Court employees to receive payment of case fees in cash from the litigants..

Provisions prohibiting the receipt of cash payment of court fees through a bank are waived if the area where the court is held does not have a bank where payment is made. Payments through banks aim to create transparency in the administration of justice in Indonesia, as an embodiment of the Decision of the Chief Justice of the Supreme Court Number 144/KMA/SK/VIII/2007 concerning Disclosure of Information in Courts. The principle of transparency can be understood through the chapter considering point a, which is formulated: "*that a transparent judicial process is one of the conditions for realizing transparency and accountability in the administration of justice*". The principle of information disclosure is to provide access to justice for people who are in litigation. Transparency in the administration of justice should become a tradition to give public confidence in judicial institutions, which so far have given the impression that judicial practices are unfair and tend to ignore the rights of parties to litigation..

Every court decision that has permanent legal force (*inkracht van gewijsde*) should be enforceable. However, the decision to pay court fees is generally not carried out simultaneously with the principal case decision. The losing party should voluntarily pay court costs, but rarely do so. The reasons for losing party not carrying out decision varied, including because they did not accept their defeat, another reason was because they no longer had the assets/money to pay the fees.

Theoretically, the non-implementation of decision is inconsistent with precept that a legally binding Court decision must be implemented, and there is no reason whatsoever for delaying it. According to Abdul Kadir Muhammad, a decision that has permanent legal force is a decision which according to the provisions of the law there is no opportunity to use ordinary legal remedies against the decision, while a decision that does not have permanent legal force is a decision which according to the provisions of the law there is still an opportunity to use legal remedies against the decision, for example *verzet*, appeal and cassation.

As a result of not implementing the Court's decision regarding the cost of case by the losing party, of course it is detrimental to the winning party in the trial. From a juridical point of view, the Court's decision regarding the payment of court fees was not implemented because there were no or no specific rules regarding the implementation of the Court's decision. In addition, the Plaintiff has never submitted a request for execution to the Court, nor has the Registrar ordered the losing party to pay court fees. The absence or absence of rules in positive law related to legal issues in society is commonly referred to as the absence of legal norms (*statutory norms in a broad sense*).

CONCLUSION

Case costs in civil case trials through the courts are borne by losing party based on the Court's decision. However, the Court's decision was not implemented by Registrar, on the grounds that winning party did not submit an application for execution. In addition, there is no or no provision governing the execution of court decisions regarding the payment of court fees. As a result, the winning party is harmed, both materially and immaterially. Therefore, rules regarding the execution of court fee payment decision should be issued immediately, at least through a Supreme Court Regulation.



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