

**Article History**

Received: 7 July 2024

Reviewed: 12 Aug 2024

Accepted: 2 Sep 2024

Published: 7 Sep 2024

Judicial Study: Parties' Opposition (*Partij Verzet*) in Proceedings to Execute Land Ownership Rights Under Civil Procedure Law

Azizah Kamilah Putri¹, Hazar Kusmayanti², Artaji Artaji³^{1,2,3} Universitas Padjadjaran, Indonesia*correspondence email : azizahkamilah@gmail.com

Abstract: Court decisions that have legal force must be complied with, and execution carried out if the losing party does not voluntarily comply with the judgment. Issues arise when the losing party appeals or takes other legal actions, delaying execution and creating legal uncertainty. Execution is applicable only to condemnatory judgments and is often obstructed by respondent's resistance, a legal challenge from the party involved in the case. The researcher highlights three cases of legal resistance efforts: the South Jakarta District Court decision number 518/Pdt.G/1999/PN Jkt.Sel, Kendal District Court decision number 20/Pdt.Bth/2021/PN Kdl, and Kendal District Court decision number 9/Pdt.Bth/2022/PN Kdl. This study employs a normative juridical method, examining descriptive-analytical literature, and utilizes a qualitative juridical approach in analysis. The research reveals discrepancies between legal certainty theory and judicial practice, where cases may not align with facts or legal standing, leading judges to reject such requests. The study concludes that respondent's resistance is a legal recourse available to the executed party against execution, which does not automatically suspend execution unless there are clear and accepted grounds recognized by the court. The Indonesian Civil Code (HIR) and Civil Procedure Law (RBg) provide legal certainty and protect the rights of those aggrieved by court decisions through the mechanism of respondent's resistance.

Keywords : Legal Remedies; Legal Challenges; Execution; Party Opposition; *Partij Verzet*

Abstrak: Putusan pengadilan yang berkekuatan hukum tetap harus dipatuhi, dan eksekusi dilakukan jika pihak yang kalah tidak memenuhi putusan secara sukarela. Masalah muncul saat pihak yang kalah mengajukan banding atau upaya hukum lain, menunda eksekusi dan menciptakan ketidakpastian hukum. Adapun, eksekusi hanya berlaku untuk putusan condemnatoir dan sering terhambat oleh partij *verzet*, perlawanan dari pihak berperkara. Dalam hal ini peneliti mengangkat contoh 3 (tiga) kasus mengenai upaya hukum perlawanan yaitu pada putusan Pengadilan Negeri Jakarta Selatan nomor 518/Pdt.G/1999/PN Jkt.Sel, putusan Pengadilan Negeri Kendal nomor 20/Pdt.Bth/2021/PN Kdl, dan putusan Pengadilan Negeri Kendal nomor 9/Pdt.Bth/2022/PN Kdl. Penelitian ini menggunakan metode yuridis normatif dengan meneliti bahan pustaka yang bersifat deskriptif analitis dan juga peneliti menggunakan pendekatan yuridis kualitatif dalam melakukan analisis. Adapun penelitian ini dapat menjelaskan kesenjangan antara teori kepastian hukum dengan praktik peradilan dan perkara tidak sesuai fakta atau legal standing, yang dalam hal mana mengakibatkan hakim menolak permintaan tersebut. Adapun, hasil penelitian menyimpulkan bahwa *partij verzet* atau perlawanan oleh pihak berperkara adalah upaya hukum yang dapat diajukan oleh pihak

tereksekusi terhadap eksekusi, perlawanan ini tidak langsung menangguhkan eksekusi, kecuali ada alasan kuat yang tampak jelas dan diterima oleh pengadilan. Dalam hal ini HIR dan RBg telah memberikan kepastian hukum dan perlindungan hak kepada pihak yang merasa dirugikan oleh putusan pengadilan melalui mekanisme *partij verzet*.

Kata Kunci: Upaya Hukum; Perlawanan; Eksekusi; Partij Verzet

INTRODUCTION

Indonesia is a rule of law country where all aspects of societal life are firmly governed by applicable laws. As an archipelagic nation with vast territorial expanses and a population of 270 million people¹, disputes over land ownership are common due to overlapping claims among communities. Recognizing this, land ownership laws are crucial and receive significant public attention, as they directly impact people's right to live on and invest in land. Land ownership in Indonesia serves as a place for residence and long-term investment, intended to be passed down to future generations.

Considering the significant public interest in land ownership, the state, as the governing authority in Indonesia, has the authority to regulate ownership, use, transfer, and registration of land rights among Indonesian citizens to reduce land disputes and potential conflicts.² This authority of the state to regulate can also be termed as its sovereignty. The presence of the state in this regard aims to prevent tendencies where individuals or groups seek extensive land ownership, which could lead to social inequalities. Without state regulation, there would likely be a race for land ownership without clear mechanisms for ownership governance. Therefore, if disputes among communities regarding land rights cannot be resolved through consensus, one fair method of dispute resolution for both parties involved is through the judicial process, governed by procedural rules outlined in the Civil Procedure Law. Filing a civil case in court becomes the final step after alternative dispute resolution attempts, such as mediation, fail to reach an agreement.

Civil claims (*Burgerlijke Vordering*) under Article 118 paragraph (1) of the Indonesian Civil Code (HIR) or Article 42 paragraph (1) of the Indonesian Civil Procedure Code (RBg) involve disputes and are generally known as legal petitions.³ The final outcome issued by the panel of judges must be executed by both parties to the best of their abilities. A court decision that has acquired legal force, especially condemnatory in nature, must be accepted by the parties, as they have had the opportunity to pursue legal remedies such as opposition, appeal, or cassation.⁴ If parties do not pursue legal remedies, it implies acceptance of the decision.

¹ Syafwendi Syafril, "Reflection, Implementation, And Consequences Of Article 33 Of The 1945 Constitution (After Amendment) Towards The Economy Of Indonesia And Islamic Economic Connection," *Airlangga International Journal of Islamic Economics and Finance* 3, no. 2 (2020): 68-75. DOI: <http://dx.doi.org/10.20473/aijief.v3i2.23878>.

² Try Widiyono, "Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law", *Law Reform* 19, no. 1 (2023): 128-147, DOI: <https://doi.org/10.14710/lr.v19i1.48393>.

³ Rahadi Wasi Bintoro, "Tuntutan Hak Dalam Persidangan Perkara Perdata", *Jurnal Dinamika Hukum* 10, no. 2 (2010): 148-156, DOI: <http://dx.doi.org/10.20884/1.jdh.2010.10.2.147>.

⁴ S. Sitorus, "Upaya Hukum Dalam Perkara Perdata (Verzet, Banding, Kasasi, Peninjauan Kembali dan Derden Verzet)", *Jurnal Hikmah* 15, no. 1 (2018): 63-71, <http://e-jurnal.staisumatara-medan.ac.id/index.php/hikmah/article/view/29>

Consequently, particularly for the losing party (defendant), they must comply with or implement the decision voluntarily.⁵ If the losing party refuses to comply voluntarily, enforcement may be carried out through coercive means, such as execution. Issues arise if the losing party (defendant) files an appeal or other legal actions to delay or stop the execution process, which can create legal uncertainty and prolong dispute resolution processes.⁶

Execution is a critical aspect of the litigation process and represents the culmination of civil cases carried out against a court decision that has acquired legal force (*Inkracht van gewisde*).⁷ The decision to obtain legal force often requires waiting for a long time, even years. However, there is an exception to this regulated by Article 180 paragraph (1) of the Indonesian Civil Code (HIR) or Article 191 paragraph (1) of the Indonesian Civil Procedure Code (RBg) regarding provisions on the execution of judgments that can be carried out beforehand, despite ongoing appeal and cassation processes. This execution of the judgment can proceed without waiting for it to gain legal force, a procedure known as "*uitvoerbaar bij voorraad*".⁸ The execution of a court judgment can only be applied to condemnatory judgments, which are judgments that impose an obligation on the losing party to perform a specific action such as delivering goods, vacating land, undertaking a specific action, ceasing a specific action, or paying a sum of money.⁹ In condemnatory judgments, the court not only establishes rights and legal principles but also enforces them through state mechanisms, allowing for coercive implementation.¹⁰

It is common for the losing party to obstruct the execution of judgments through what is known as "*partij verzet*," which is opposition or resistance by one of the litigating parties.¹¹ For example, the debtor may file opposition to halt legal proceedings,¹² thereby delaying the execution of a writ of execution based on a debt acknowledgment or mortgage deed. This opposition often includes formal validity reasons and substantive arguments concerning the exact amount of debt involved.

A court decision that has acquired legal force may not always be complied with voluntarily by the losing party (defendant) in a case. The defendant can file legal opposition as a litigating party, known as "*partij verzet*," or through a third party outside the litigation, known as "*darden verzet*".¹³ Legal opposition (*verzet*) is an action that can be taken by the

⁵ Hazar Kusmayanti, "Praktik Eksekusi Riil Tanah Milik Masyarakat Adat Sunda Wiwitan", *SASI* 26, no. 3 (2020): 341-355, DOI: <https://doi.org/10.47268/sasi.v26i3.285>.

⁶ Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata* (Jakarta: Sinar Grafika, 2013), 6.

⁷ Lilik Mulyadi, *Hukum Acara Perdata: Teori dan Praktek Peradilan di Indonesia* (Jakarta: Djambatan, 2002), 276.

⁸ Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata, Op. Cit.*, 9.

⁹ Subekti, *Hukum Acara Perdata* (Bandung: Bina Cipta, 1997), 130.

¹⁰ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 1993), 183.

¹¹ Husni Ingratubun and Fitri Ingratubun, "Implementation of Mediation Effort For Settlement At The Class Ia Religious Court In Jayapura", *SASI* 29, no. 4 (2023): 717-739, DOI: <https://doi.org/10.47268/sasi.v29i4.1708>.

¹² Moch. Rizky Adi Pratama Putra, "Kedudukan Eksekusi Hak Tanggungan Berdasarkan Grosse Akta Pengakuan Utang", *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (2023): 749-765, DOI: 10.53363/bureau.v3i1.214.

¹³ Adriana, "Perlawanan Pihak Ketiga (*Darden Verzet*) Terhadap Eksekusi Putusan No: 08/Pdt.G/2017/PN.JO",

defendant when a judgment is issued, especially if the plaintiff has already filed an appeal.¹⁴ Opposition as a litigating party (hereinafter referred to as *Partij Verzet*) in civil procedural law refers to a legal challenge initiated by the executed party against the execution of movable and immovable property seizures. This opposition cannot suspend execution, but execution must be postponed if the opposition is legitimate and well-founded, at least until a judge renders a decision.¹⁵

Furthermore, the researcher highlights three cases involving legal opposition efforts (*partij verzet*): the litigating party's opposition in the South Jakarta District Court decision number 518/Pdt.G/1999/PN Jkt.Sel, the Kendal District Court decision number 20/Pdt.Bth/2021/PN Kdl, and the Kendal District Court decision number 9/Pdt.Bth/2022/PN Kdl.¹⁶

In the first case example, there are differences observed between the rulings of case number 518/Pdt.G/1999/PN Jkt.Sel and cases number 20/Pdt.Bth/2021/PN Kdl and 9/Pdt.Bth/2022/PN Kdl. In this instance, the panel of judges considered a dispute related to the interest rate difference on the principal loan between the opposing party (Pelawan) and the defending party (Terlawan). Pelawan, acting as *Partij Verzet*, filed a request to annul the South Jakarta District Court's Decision number 73/Eks.HT/1999/PN Jkt.Sel and asserted that the Mortgage Certificate is equivalent to a final and binding court decision. The panel of judges referred to Law Number 4 of 1996 concerning Mortgage Rights and Article 1338 of the Indonesian Civil Code, stating that agreements have legal force and the parties must comply with them. The Court Decision from the South Jakarta District Court regarding the execution seizure of the opposing party's land, the panel of judges opined that this action complies with applicable legal provisions, such as Article 195 paragraph (1) of the Indonesian Civil Code (HIR), Article 196 HIR, Article 197 HIR, Article 200 paragraph (1) HIR, and Law Number 4 of 1996 concerning Mortgage Rights.

In the second case example, regarding the Kendal District Court decision number 20/Pdt.Bth/2021/PN Kdl, the panel of judges stated that the opposing parties to the execution did not meet the criteria to have legal standing. This was because opposition by a third party (*dander verzet*) can only be filed by a third party who is directly affected, whereas the opposing parties to the execution were parties who had lost the case. The decision had attained legal force, and the opposition by the opposing parties was declared inadmissible (*Niet Ontvankelijk Verklaard*). In considering the legal challenge against the execution order concerning disputes over land ownership rights, the judges assessed that only third parties

Journal of Lex Generalis 2, no. 2 (2021): 598-607, DOI: <https://doi.org/10.52103/jlg.v2i2.354>.

¹⁴ Prilla Geonestri Ramlan, "Verzet, Upaya Perlawanan Atas Putusan Verstek," Artikel Kementerian Keuangan Republik Indonesia, 2021, <https://www.djkn.kemenkeu.go.id/kpknl-lahat/baca-artikel/14205/Verzet-Upaya-Perlawanan-Atas-Putusan-Verstek.html> (accessed December 20, 2023).

¹⁵ T. Jata Ayu Pramesti, "Perlawanan Terhadap Sita Eksekusi Partij Verzet," Artikel, hukumonline.com, <https://www.hukumonline.com/klinik/a/perlawanan-terhadap-sita-eksekusi-partij-verzet-cl3263> (accessed December 15, 2023).

¹⁶ "Direktori Putusan Mahkamah Agung Republik Indonesia," <https://putusan3.mahkamahagung.go.id> (accessed September 9, 2023).

(dander verzet) have the right to file opposition. The defendants *as partij verzet* did not have the right to file opposition. The researcher will analyze this based on civil procedural law theory, where the litigation of opposition by a litigating party must meet formal requirements as stipulated in Article 224 of the Indonesian Civil Code (HIR). Article 224 HIR grants the right to the executed party to file opposition against the execution regarding formal validity and substantive reasons related to the exact amount of debt. Based on these grounds—formal validity and substantive reasons—the executed party can file opposition with the demand that the execution of the object of execution be rejected or declared non-executable.¹⁷

The use of opposition lawsuits by the executed party (*partij verzet*) in practice may not always be accepted by judges. This depends on how well the opposing party can present legal arguments that strengthen their claim. A critical aspect serving as the basis for filing an opposition lawsuit should involve specific reasons, such as execution or seizure actions that exceed the scope of the related court decision. Execution or seizure that does not adhere to the court's ruling and violates legal norms and public order is a significant consideration in these cases.¹⁸

The third case, Kendal District Court decision number 9/Pdt.Bth/2022/PN Kdl, involves opposition to the execution stemming from case number 20/Pdt.Bth/2021/PN Kdl. The challengers argued that the execution was not in accordance with the true facts, specifically that the land boundaries did not match the physical boundaries (both as stated in the initial lawsuit and the current physical condition of the disputed property). The panel of judges deliberated on this with two differing opinions (dissenting opinions), but in the interest of justice, the majority opinion of the judges was reflected in the court decision. The judges granted part of the challengers' opposition to the execution and ordered the Clerk/Bailiff of the Kendal District Court to suspend the execution process. This case highlights the gap between legal certainty theory and the practical realities within the judiciary, where discrepancies in facts and legal standing can lead to litigants receiving decisions that do not align with their requests, as the judge may reject their claims.

Based on the background previously outlined, there are several legal issues that can be analyzed as follows: How is the application of opposition by litigating parties (*Partij Verzet*) against the execution of property rights based on civil procedural law? What is the legal certainty for parties in challenging the execution of property rights through opposition proceedings under civil procedural law?.

METHOD

¹⁷ Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, *Op. Cit.*, 390.

¹⁸ Rudy H. Walukow, "Suatu Tinjauan Tentang Perlawanan (Verzet) Dalam Perkara Perdata", *Jurnal Lex Privatum* 8, no. 4 (2020): 49, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/30977>.

This research employs a normative juridical approach conducted by examining only secondary sources or literature.¹⁹ It falls under descriptive-analytical research, which explains an analysis depicting gaps between legal certainty theory and the actual practices within the judicial environment, where discrepancies in facts and legal standing can lead to litigants receiving decisions that do not align with their requests, as the judge may reject their claims. Subsequently, it is analyzed qualitatively from a juridical perspective.²⁰

DISCUSSION

The Application Of Opposition By Litigating Parties (*Partij Verzet*) Against The Execution Of Property Rights Based On Civil Procedural Law

In civil procedural law, there is a term known as *partij verzet* or opposition by the litigating party. *Partij verzet* is often associated with legal efforts by the losing party to oppose execution against themselves.²¹ Opposition against execution (*partij verzet*) is regulated in Article 207 of the HIR (Herziene Inlandsch Reglement) and Article 225 of the RBg (Rechtsreglement). The opposition to execution is further elaborated in Book II of the Guidelines for the Implementation of Court Duties and Administration published by the Supreme Court, as follows a) opposition against execution of movable and immovable property is regulated in Article 207 of the HIR or Article 225 of the RBg; b) this opposition, in principle, does not suspend execution according to Article 207 (3) of the HIR or 227 RBg. However, execution must be suspended if it promptly appears that the opposition is valid and justified, at least until a decision is made by the District Court, c) regarding court decisions, an appeal is permitted to file opposition.

The guidelines issued by the Supreme Court regarding opposition filed by the executed party (*partij verzet*) refer to the provisions found in Article 207 of the HIR and Article 225 of the RBg. The provisions of Article 207 HIR and Article 225 RBg paragraph (1) are as follows:

"Opposition by the debtor against the execution of seizure, whether against movable or immovable property, is submitted by the opposing party, either in writing or orally, to the Chief Justice of the relevant District Court as mentioned in paragraph (6) of Article 195, who records or instructs the recording of it if the opposition is made orally."

Article 195 paragraph (6) of the HIR regulates the jurisdiction of the Court according to its territorial jurisdiction. Furthermore, the provisions of Article 195 paragraph (6) of the HIR are as follows:

"Opposition (verzet) against the execution of a judgment, also by third parties claiming ownership of the seized property, is similar to all disputes regarding

¹⁹ Soerjono Soekanto and Sri Mahmudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003), 13.

²⁰ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia, 2013), 252.

²¹ Dita Amalia and Dian Latifiani, "Pandemi Covid-19 As A Factor of Delays in The Execution of Court Decisions", *Pandecta* 18, no. 1 (2023): 24-34, DOI: <http://dx.doi.org/10.15294/pandecta.v18i1.44130>.

compulsory measures ordered to be enforced, submitted to and adjudicated by the District Court having jurisdiction where such enforcement actions are carried out."

Furthermore, in paragraphs (2) and (3), it reads:

"This opposition is submitted by the Chairman to the next Court session for decision, after the parties have been heard or duly summoned. This opposition does not prevent the commencement or continuation of the execution unless the Chairman has ordered a temporary cessation pending the Court's decision."

The opposition lawsuit by the opposing party must meet formal requirements as regulated in Article 224 of the Code of Civil Procedure (HIR). This article grants the executed party the right to file an opposition lawsuit against the execution, focusing on two crucial aspects. First, the issue of formal validity, and second, substantive reasons related to the precise amount of debt. Considering these two aspects, the executed party has the authority to file an opposition lawsuit demanding that the decision subject to execution be denied enforcement or declared non-executable.²²

In this research, formal validity refers to the procedural compliance of the execution process carried out by the competent authority. This includes an assessment of whether the procedures followed align with applicable legal provisions, including whether notices given to relevant parties were properly conducted, or if the execution process itself adhered to established rules. Material reasons concern the substance or legal basis of the execution conducted. This involves an evaluation of whether the debt amount forming the basis of the execution has been correctly determined and meets the required criteria under applicable law. The executed party has the right to dispute the material validity of the execution, including arguments concerning errors in determining the debt amount underlying the execution.²³

The resistance lawsuit is an effort by the executed party to uphold their rights and question the validity and fairness of the execution process carried out against them. The executed party hopes that the decision subject to execution will not be enforced or declared non-executable²⁴, based on legal grounds presented in the resistance lawsuit. The use of the opposition lawsuit (*partij verzet*) in legal practice does not always result in favorable decisions for the resistor. The success of such a lawsuit heavily depends on the resistor's ability to present legal arguments that strengthen their claims. Judges have the authority to assess the strength of legal arguments presented by the resistor in the opposition lawsuit. In making their decision, judges consider various factors, including the clarity and strength of the arguments presented, compliance with applicable legal provisions, and evidence supporting the claims made in the lawsuit.²⁵

²² Interview with Mr. Intan Panji Nasarani, Judge at Bandung District Court Class 1A Special [June 27, 2024].

²³ Interview with Mr. Teguh Arifiano, Judge at the District Court of Bale Bandung, Class IA [June 4, 2024].

²⁴ Robitum Maftukh Zakariyah, Juridical Overview Regarding the Unenforceability of Court Decisions in Civil Cases That Have Permanent Legal Force", *Indonesian Journal of Public Policy Review* 11 (2020), DOI: 10.21070/ijppr.v11i0.1162.

²⁵ Aditya Yuli Sulistyawan, "Arti Penting Legal Reasoning Bagi Hakim Dalam Pengambilan Putusan Di Pengadilan

The judge has the duty to examine whether the lawsuit meets the formal and material requirements stipulated in civil procedural law.²⁶ If the resistor has used the opposition lawsuit (*partij verzet*) as a means to challenge the execution, success is not guaranteed outright. The resistor needs to prepare strong and relevant legal arguments and provide evidence supporting their claims to have a better chance of winning the lawsuit.²⁷ The judge's decision on the opposition lawsuit (*verzet*) will heavily depend on the resistor's ability to present convincing legal arguments. The crucial aspects that should serve as the basis for filing the opposition lawsuit include: a) execution or attachment executed beyond the provisions of the relevant court decision; b) execution or attachment executed not in accordance with the provisions of the court decision; c) execution or attachment executed contrary to decency laws or public order.²⁸

It should be noted that in filing a resistance claim, the plaintiff must have a strong basis related to the inconsistency of execution or attachment with the relevant court decision. This may include execution that exceeds or does not conform to what has been stipulated in the court decision. Furthermore, if such execution contradicts decency laws or public order, it can also serve as a valid basis for filing a resistance claim. The resistance claim must be based on discrepancies or violations of the court decision or applicable law, thereby allowing the plaintiff to obtain appropriate legal protection.²⁹

Essentially, the basis of execution refers to the dictum of the court decision. This is a principle that must be adhered to by all parties, ensuring that the execution carried out by the court does not deviate from the court's dictum to prevent exceeding its authority. When execution exceeds its authority, it can lead to losses for both the executed party and the applicant for execution. During execution, there is a possibility that assets of the executed party not involved in the dispute may also be seized³⁰, resulting in the applicant for execution not obtaining the intended objects of execution.³¹

The decree or considerations of a court decision, if lacking clear explanations regarding the size or boundaries of the land to be executed upon, typically involve the Chief Judge of the District Court ordering an on-site inspection before execution proceeds. This on-site inspection aims to precisely determine the object of execution, both in terms of area and location of the land in question.³² This process allows for an objective depiction of the actual

Untuk Menghindari "Onvoldoende Gemotiveerd", *Jurnal Ius Constituendum* 6, no. 2 (2021): 482-496, DOI: <http://dx.doi.org/10.26623/jic.v6i2.4232>.

²⁶ Disriani Latifah Soroinda, "Kekuatan Pembuktian Alat Bukti Elektronik Dalam Hukum Acara Perdata", *Jurnal Hukum dan Pembangunan* 52, no. 2 (2022): 384-405, <https://scholarhub.ui.ac.id/jhp/vol52/iss2/4/>.

²⁷ Interview with Mr. Teguh Arifiano, Judge at the District Court of Bale Bandung, Class IA [June 4, 2024].

²⁸ Rudy H. Walukow, "Suatu Tinjauan Tentang Perlawanan (Verzet) Dalam Perkara Perdata", *Op. Cit.*

²⁹ Interview with Mr. Intan Panji Nasarani, Judge at Bandung District Court Class 1A Special [June 27, 2024].

³⁰ Syahril, "Pelaksanaan Eksekusi Pengosongan Lahan Yang Telah Berkekuatan Hukum Tetap Di Wilayah Hukum Pengadilan Negeri Bangkinang", *Jurnal Pustaka Cendekia Hukum dan Ilmu Sosial* 1, no. 11 (2023): 103-115, <https://pchukumsosial.org/index.php/pchs/article/view/30>.

³¹ Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, *Op.Cit.*, 390.

³² Febrina Indrasari, "Tinjauan Tentang Kekuatan Pembuktian Pemeriksaan Setempat Dalam Pemeriksaan Sengketa Perdata (Sengketa Tanah) Di Pengadilan Negeri Surakarta", *Jurnal Jurisprudence* 5, no. 1 (2015): 9-14,

conditions of the execution object in the field, thereby providing much-needed clarity regarding the execution process.

Site inspection is a crucial step to ensure that the execution is carried out correctly and in accordance with applicable legal provisions. By conducting direct inspections at the location, authorities can obtain accurate information regarding the size and boundaries of the land to be executed. This helps to avoid misunderstandings or ambiguities that may arise due to inadequate explanations in the court's decision.³³

The Opposers have taken the correct steps in filing *partij verzet*, based on a strong legal foundation as regulated by Article 207 of the HIR. According to this provision, during the examination of the opposition in *partij verzet*, the focus shifts away from the substantive merits of the case, as these have already been decided and the decision has attained legal finality. Consequently, the examination in *partij verzet* is solely focused on assessing errors in the application or execution of the court's decision that deviate from the context of the dictum of the judgment. The purpose of this examination in *partij verzet* is designed to review whether there were any errors in the application or execution of a final court decision. The importance of this examination lies in preventing actual losses for the party opposing the execution, or in this context, the Opposers. Therefore, this step represents an appropriate strategy to protect the legal rights and interests of the parties involved.³⁴

According to Lilik Mulyadi, the judgment pronounced by a judge represents the pinnacle and culmination of a case under examination and adjudication by that judge. When crafting a judgment, the judge must consider all aspects, beginning with the necessity for caution, minimizing as much as possible any inaccuracies, whether formal or substantive, and demonstrating technical competence in its formulation.³⁵ The judge's decision holds a highly significant position in a case being examined and adjudicated by them, serving as the crown and culmination of the judicial process. This decision represents the final outcome of careful deliberation by the presiding judge.

In the decision-making stage, judges must consider all relevant aspects, from the need for caution to efforts to avoid even the smallest errors, whether formal or substantive.³⁶ Attention to detail and caution in the decision-making process are crucial, as even minor errors can significantly impact the case's outcome. Therefore, technical proficiency in formulating decisions is key to ensuring justice and the overall success of the judicial process. By considering all relevant aspects, a judge's decision can provide a solid foundation for legal certainty and justice for all parties involved in the case.

The researcher conducted an analysis by examining three cases illustrating *partij verzet*

DOI: <https://doi.org/10.23917/jurisprudence.v5i1.4216>.

³³ Interview with Mr. Intan Panji Nasarani, Judge at Bandung District Court Class 1A Special [June 27, 2024].

³⁴ *Ibid.*

³⁵ Lilik Mulyadi, *Hukum Acara Pidana Normatif, Teoritis, Praktik dan Permasalahannya* (Bandung: Alumni, 2007), 203.

³⁶ Najuasah Putra, "Perlindungan Hukum Terhadap Perlawanan Tereksekusi Partij Verzet Atas Sita Eksekusi (Studi Putusan Nomor: 16/Pdt.Bth/2022/Pn.Ktn)", *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 12, no. 1 (2024): 13-25, DOI: <https://doi.org/10.29103/sjp.v12i1.15186>.

in decisions from the South Jakarta District Court, Case No. 518/Pdt.G/1999/PN Jkt.Sel, the Kendal District Court, Case No. 20/Pdt.Bth/2021/PN Kdl, and the Kendal District Court, Case No. 9/Pdt.Bth/2022/PN Kdl. The analysis of these cases provides a deep understanding of how the legal process of opposition is conducted in different contexts. The first case, the decision from the South Jakarta District Court, Case No. 518/Pdt.G/1999/PN Jkt.Sel, serves as a focal point, offering insights into how legal remedies for opposition were regulated and applied in a specific context in 1999. Meanwhile, the cases involving the Kendal District Court, Case No. 20/Pdt.Bth/2021/PN Kdl, and Case No. 9/Pdt.Bth/2022/PN Kdl, examine the development and implementation of opposition remedies in the context of more recent legal reforms. Based on a detailed analysis of these three cases, this study provides an understanding of how opposition legal remedies play a role in ensuring justice and legal certainty across various judicial contexts.³⁷

In Case No. 518/Pdt.G/1999/PN Jkt.Sel, the panel of judges carefully deliberated on the dispute regarding the discrepancy in the principal loan interest between the plaintiff (*partij verzet*) and the defendant. The plaintiff, acting as the *partij verzet*, filed a request to annul the South Jakarta District Court's Decision No. 73/Eks.HT/1999/PN Jkt.Sel. They argued that the Mortgage Certificate they possessed was equivalent to a court decision with final and binding legal force. In rendering their decision, the judges referred to Law No. 4 of 1996 on Mortgages and Article 1338 of the Indonesian Civil Code, which stipulates that an agreement has legally binding force on the parties involved.

Based on this legal foundation, the panel of judges concluded that the parties involved in the agreement must adhere to the stipulated terms. Regarding the South Jakarta District Court's Decision on the execution seizure of the plaintiff's land, the judges asserted that this action complied with the applicable legal provisions as outlined in Article 195(1), Article 196, Article 197, and Article 200(1) of the Indonesian Regulation of Civil Procedure (*HIR*), as well as Law No. 4 of 1996 on Mortgages. Consequently, this decision not only reflects the appropriate application of the law but also underscores the importance of compliance with various relevant legal provisions when handling complex cases like this.

In Case No. 20/Pdt.Bth/2021/PN Kdl from the Kendal District Court, the judges determined that the plaintiffs did not meet the qualifications for legal standing to file opposition. This was because opposition attempts by third parties (*darden verzet*) can only be made by those third parties who are adversely affected, whereas the plaintiffs in the execution opposition had already lost the case. This ruling became final, and the plaintiffs' opposition lawsuit was declared inadmissible (*Niet Ontvankelijk Verklaard*).

In considering the legal opposition to the execution order concerning the dispute over land ownership rights, the judges held that only third parties (*darden verzet*) have the right to file an opposition, while the defendant holding the status of *partij verzet* does not meet the criteria to file an opposition. This interpretation highlights the importance of understanding the requirements for legal standing in the context of legal opposition and

³⁷ "Direktori Putusan Mahkamah Agung Republik Indonesia," *Op. Cit.*

provides a clear illustration of the limitations on filing opposition against execution orders in land ownership disputes.

It is crucial for the opposing parties to heed the provisions of Article 224 of the Indonesian Regulation of Civil Procedure (*HIR*), which stipulates that the party subject to execution must meet the formal requirements outlined in this article. Article 224 *HIR* grants the party being executed the right to file an opposition lawsuit against the execution, focusing on both formal validity and material reasons related to the definite amount of debt. By referring to these two grounds, formal validity and material reasons, the party subject to execution has the right to file an opposition lawsuit. This lawsuit can include demands to reject the execution of the decision or declare it non-executable. Thus, Article 224 *HIR* provides legal protection to the party subject to execution, offering them an opportunity to review the formal and material validity and adequacy of the execution conducted against them. This reflects the essential principles of procedural justice in the judicial system, ensuring that every party has an equal opportunity to defend their rights in legal proceedings.³⁸

In the decision of the Kendal District Court, Case No. 9/Pdt.Bth/2022/PN Kdl, opposition to the execution based on the decision of Case No. 20/Pdt.Bth/2021/PN Kdl was filed. In this context, the opposing parties, facing execution, argued that the execution was not in accordance with the actual facts, particularly concerning the disputed land boundaries. This discrepancy involved both the description of the land boundaries at the time the lawsuit was filed and the current physical condition of the disputed object, which was considered not to reflect the actual situation on the ground.

During the trial, the panel of judges faced a complex situation where there was a dissenting opinion among the panel members. This difference in opinion indicated varying interpretations of the relevant facts and laws pertaining to the case. However, to uphold the principle of justice and reach a fair and balanced decision, the final verdict was made based on the majority opinion of the panel members. This majority opinion was then officially recorded in the case's judgment.

Based on this judgment, the panel of judges partially granted the objections raised by the Execution Objectors. This decision reflects the judges' acknowledgment of discrepancies and errors in the execution carried out based on the previous ruling. As a follow-up to this decision, the judges ordered the Registrar or Bailiff of the Kendal District Court to suspend the execution process. This suspension aims to ensure that the execution is conducted in accordance with the actual facts and conditions and to avoid injustice towards the parties involved in the case.

Legal Certainty for Parties in Opposition to Execution of Land Ownership Rights

Civil procedural law, as a formal legal source, plays a crucial role in governing various

³⁸ Rudy H. Walukow, "Suatu Tinjauan Tentang Perlawanan (Verzet) Dalam Perkara Perdata", *Op. Cit.*

forms of opposition within the judicial process.³⁹ Opposition against default judgments (*verstek*) is one such regulated form, allowing the absent losing party to contest the judgment rendered in their absence.⁴⁰ Additionally, civil procedural law regulates *partij verzet*, where parties directly involved in a case oppose a court decision to protect their rights adversely affected by it. Another form of opposition is *darden verzet*, where third parties not directly involved in the case but affected by the decision may oppose it. Detailed provisions concerning these forms of opposition are stipulated in the Indonesian Regulation of Civil Procedure (*HIR*) and the Regulation for Civil Procedures for Regions Outside Java and Madura (*RBg*).

The clear and detailed regulations in *HIR*, *RBg*, and civil procedural law provide legal certainty for parties seeking to file *partij verzet*. The mechanism for filing *partij verzet* is designed to ensure that every party feeling aggrieved by a court decision has the right and opportunity to voice their objections through established procedures. These procedures encompass various stages, from submitting applications to undergoing a fair and transparent trial process.⁴¹ Civil procedural law serves as a tool to maintain balance and justice within the judicial system, ensuring that every decision reflects substantive fairness for all parties involved.⁴² This mechanism also contributes to fostering trust in the judicial system by guaranteeing that the rights of all parties are protected and proportionally considered in every legal process.

In examining the provisions of Article 125 of the Indonesian Regulation of Civil Procedure (*HIR*) / Article 149 of the Regulation for Civil Procedures for Regions Outside Java and Madura (*RBg*) and Article 129 of *HIR* / Article 152 of *RBg*, the scope of *partij verzet* encompasses the parties involved in the case, whether they are plaintiffs or defendants. The party filing the opposition is known as the opposing party, while the party being opposed is referred to as the opposing party, who in the context of *partij verzet* is the party that was previously the adversary in the case. These provisions grant both parties in the case the right to oppose a decision they deem detrimental to their interests.

In a legal case, if during the examination process the opposing party successfully proves their claims, and the judge in their decision declares the opposing party to be correct, then the process of executing the seizure of the land cannot be upheld any longer. The decision declares that the execution no longer has legal force and must be immediately halted through a ruling issued by the judge. This ruling aims to ensure that the previously

³⁹ Halida Zia, "Pengetahuan Hukum Tentang Hukum Acara Perdata", *RIO Law Jurnal* 1, no. 2 (2020), DOI: <https://doi.org/10.36355/v1i2.404>.

⁴⁰ Hartika Nurfaizah and Miftahus Sholehudin, "Legal Defect of Verstek Decision with Invalid and Proper Summons in the Context of Civil Procedure Law", *Al-Bayyinah* 7, no. 2 (2023): 242-260, DOI: <https://doi.org/10.30863/al-bayyinah.v7i2.5464>.

⁴¹ Yahya Harahap, *Perlawanan Terhadap Eksekusi Grose Akta Serta Putusan Pengadilan Dan Arbitrase Dan Standar Hukum Eksekusi* (Bandung: Citra Aditya Bakti, 1993).

⁴² Ahmad Habib Alfiktry, "National Law Development through Civil Procedure Law Reform as a Manifestation of State Goals during the Covid-19 Pandemic", *Lex Scientia Law Review* 5, no. 2 (2021): 41-64, DOI: [10.15294/lesrev.v5i2.50483](https://doi.org/10.15294/lesrev.v5i2.50483).

planned execution, which would have been unlawful, is stopped and provides legal protection to the opposing party who was adversely affected by the initial decision. However, if the opposing party fails to substantiate their claims during the examination process, the judge will state in their decision that the opposing party is not correct.

Opposition to the execution seizure of the land will be rejected, and as a consequence, the execution will proceed according to the applicable legal procedures.⁴³ This decision ensures that the execution process proceeds in accordance with legal provisions and provides legal certainty to the opposing party entitled to enforce the court's decision. The *partij verzet* procedure serves as a means to maintain balance and justice in the judicial process, offering a fair opportunity for both parties to voice their objections and ensuring that every court decision is based on clear and strong evidence.

Based on Article 129 paragraph (2) of the Indonesian Regulation of Civil Procedure (HIR), the timeframe for filing opposition against a default judgment is specified. The party defeated in a default judgment has 14 days after being notified of the judgment to file opposition.⁴⁴ This provides an opportunity for the absent party during the judgment to challenge the decision, present arguments, and provide evidence that may alter the initial judgment. If the defeated party does not appear when summoned, as stipulated in Article 196 of HIR, the deadline for filing opposition is extended until the eighth day after the summons. This summons serves as a formal notice by the court to inform the defeated party of the judgment and request their presence to continue the legal process. Should the defeated party still fail to appear after the summons, the timeframe for filing opposition continues until the eighth day after the execution seizure is carried out.

Execution seizure is an act of confiscation performed by the court as part of enforcing a legally binding decision.⁴⁵ The defeated party still has the opportunity to oppose the judgment within the specified timeframe, which extends until the eighth day after the seizure is conducted. This regulation ensures that parties feeling aggrieved by a default judgment have sufficient time to file opposition and ensures that every step of execution is conducted with proper and fair procedures.⁴⁶

The clear provisions regarding the timeframe for filing opposition against default judgments provide legal certainty and protection to the defeated party, ensuring that every execution action is carried out transparently and in accordance with principles of justice. These provisions also encourage parties involved in litigation to actively participate in the legal process and exercise their rights in a timely manner to uphold the integrity and effectiveness of the judicial system.⁴⁷

⁴³ Iskandar Laka, "Analisis Yuridis Pelaksanaan Verzet Terhadap Eksekusi Dalam Perkara Perdata", *Lex Privatum* 8, no. 4 (2020): 61, DOI: <https://doi.org/10.53027/jp.v1i1.243>.

⁴⁴ Abd. Basir, "Analisis Yuridis Perlawanan Pihak Ketiga (Derden Verzet) terhadap Putusan Verstek Sengketa Hak Milik Atas Tanah", *Pledoi Law Jurnal* 1, no. 1 (2023): 1-9, <https://jurnalfkmuuit.id/index.php/plj/article/view/8>.

⁴⁵ Edwin Yuliska, "Tindakan Sita Jamin Untuk Menjamin Pelaksanaan Putusan Dikemudian Hari Pada Perkara Perdata", *Jurnal Normative* 10, no. 1 (2022): 81-88, DOI: 10.31317/normative.jurnal.ilmah.hukum.v10i1.April.771.

⁴⁶ Interview with Mr. Intan Panji Nasarani, Judge at Bandung District Court Class 1A Special [June 27, 2024].

⁴⁷ Muh. Khairum, "Kewenangan Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Mewujudkan

According to Yahya Harahap, upon examining Article 195 paragraph (6) of the Indonesian Regulation of Civil Procedure (HIR), it can be observed that this provision specifically addresses the basis of "property rights" in the context of *verzet*, without delving into other specific reasons that could underlie the filing of *verzet*. Harahap argues that this gap is not an oversight but a deliberate act by legislators to provide flexibility and breadth in its application within judicial practice. Consequently, the court has the freedom to assess and consider various reasons put forward in *verzet* on a case-by-case basis. Article 165 paragraph (6) of the HIR reinforces the view that the grounds for submitting *partij verzet* are broad and not constrained by stringent provisions. This allows parties feeling aggrieved by a decision to lodge opposition based on reasons that may not be explicitly stated in the law but are relevant to the specific case at hand. Therefore, aggrieved parties have the opportunity to present their arguments comprehensively, which can then be considered by the judge in making decisions.⁴⁸

It can be concluded that Article 195 paragraph (6) of the Indonesian Regulation of Civil Procedure (HIR), which only addresses the basis of "property rights" in *verzet* without discussing other reasons, intentionally remains open-ended by the legislators. The purpose is to provide flexibility and breadth in the application of law in judicial practice. With Yahya Harahap's viewpoint, it is clear that this gap in the provision allows the court to assess various reasons presented in *verzet* more freely, based on the uniqueness and context of each case. This indicates that the grounds for submitting *partij verzet* are expansive, offering greater legal protection to aggrieved parties, and enabling the court to conduct fair and comprehensive assessments in every case handled.

According to Sudikno Mertokusumo, legal certainty is an assurance that the law must be executed properly.⁴⁹ Legal certainty requires legislative efforts to regulate laws by competent and authoritative entities, ensuring that these rules have juridical aspects that guarantee certainty that the law functions as a regulation to be obeyed.⁵⁰ Legal certainty is crucial in the context of *partij verzet* or opposition in civil procedural law. Legal certainty asserts that the law must be applied consistently and fairly, adhering to regulations established in valid and authoritative legislation. In relation to *partij verzet*, legal certainty serves as the foundation to ensure that legal processes adhere to applicable rules and provide justice to all parties involved.

Submission of *partij verzet*, legal certainty implies that the party filing the opposition must demonstrate that there is non-compliance with legal rules or that the given judgment does not align with the applicable facts or laws. For instance, if an execution order contains ambiguity or violates conditions stipulated in the law, the aggrieved party can file *partij*

Perdamaian Sebagai Bentuk Penegakan Keadilan", *Journal of Lex Generalis* 2, no. 9 (2021): 2352, <https://pasca-umi.ac.id/index.php/jlg/article/view/630>.

⁴⁸ Retnowulan Sutantio, *Hukum Acara Perdata dalam Teori dan Praktek*, cet. ke-8 (Bandung: Iskandar Maju, 1997), 187.

⁴⁹ Risky Vista Puspita Sari, "Kepastian Hukum Pengaturan Penggunaan Tenaga Kerja Asing di Indonesia", *Lentera Hukum* 5, no. 3 (2018): 389-402, DOI: <https://doi.org/10.19184/ejlh.v5i3.6839>.

⁵⁰ Zainal Asikin, *Pengantar Tata Hukum Indonesia* (Jakarta: Rajawali Press, 2012), 126.

verzet to uphold their rights. Legal certainty in the context of *partij verzet* pertains to strong juridical aspects ensuring that every judicial and legal execution adheres to fair and measured legal standards. This instills public confidence that legal processes are not swayed by personal interests or policies alone but are grounded in objective and established legal principles.⁵¹

The application of legal certainty in *partij verzet* also signifies that the legal system provides opportunities for affected parties to advocate for their rights fairly and transparently. Thus, legal certainty not only ensures consistency in legal application but also underscores that the law is an effective instrument for upholding social justice and protecting human rights within the realm of justice.

According to Hans Kelsen, justice is a particular social order under which the endeavor to seek truth can develop and flourish, because justice, according to him, encompasses justice in freedom, justice in peace, justice in democracy, and justice in tolerance.⁵² Hans Kelsen's theory of justice as a specific social order that provides protection for the endeavor to seek truth, enabling its development and flourishing, holds profound relevance to the concept of "*partij verzet*" in civil procedural law. *Partij verzet*, or opposition to court decisions, plays a crucial role in upholding justice within the judicial system. Justice here extends beyond mere formal application of the law; it encompasses principles such as freedom, peace, democracy, and tolerance. In the context of *partij verzet*, justice is realized through mechanisms that allow parties aggrieved by court decisions to raise objections and defend their rights. This process provides space for involved parties to ensure that court decisions not only adhere to legal rules but also reflect substantive justice.

Hans Kelsen emphasized that justice is the foundation of a social order that creates an environment where the pursuit of truth can flourish. In the context of "*partij verzet*," this means that the judiciary must provide sufficient legal protection for parties who feel their rights have been violated or disregarded in the judicial process. When a party filing "*partij verzet*" can prove that there was injustice in a court decision that unfairly benefited another party, the legal process must provide an appropriate response to ensure justice is restored.

Kelsen's concept of justice also includes elements such as democracy and tolerance. In the context of "*partij verzet*," this can be interpreted as the need for a transparent and open legal process where various voices and arguments can be heard and fairly considered. Democracy in this context demands that legal decisions not only reflect the interests of the majority but also protect the rights of minorities or individuals who may not have the same influence as other parties in influencing court decisions.

"*Partij verzet*" as a legal mechanism makes a significant contribution to realizing the vision of justice as articulated by Hans Kelsen. This involves not only the endeavor to seek truth and maintain social peace but also accommodating values such as democracy and tolerance within the context of comprehensive legal protection for all parties involved in the

⁵¹ Interview with Mr. Teguh Arifiano, Judge at the District Court of Bale Bandung, Class IA [June 4, 2024].

⁵² Satjipto Rahardjo, *Ilmu Hukum*, cet. ke-8 (Bandung: Citra Aditya Bakti, 2014).

judicial process. By providing fair access and clear procedural avenues to challenge decisions, civil procedural law bridges the gap between Kelsen's idealistic vision of justice and its implementation in everyday judicial practice.

Civil procedural law, as a formal legal source detailed in the *Herziene Inlandsch Reglement (HIR)* and *Rechtsreglement voor de Buitengewesten (RBg)*⁵³, plays a central role in providing legal certainty for all parties involved in the judicial system. The mechanism of *partij verzet* enables parties aggrieved by court decisions to lodge objections and safeguard their potentially jeopardized rights. This not only ensures fair access to the legal process but also ensures that every decision made by the court reflects substantive justice based on strong evidence.⁵⁴

According to Hans Kelsen, justice is not merely the formal application of law but encompasses aspects such as freedom, peace, democracy, and tolerance. In the context of *partij verzet*, justice is realized through mechanisms that allow parties affected by court decisions to file oppositions based on various relevant reasons. This provides room for parties involved in cases to ensure that the legal process not only complies with legal rules but also provides equal protection of their rights. Civil procedural law serves not only as a tool to enforce the law but also as a means to achieve substantive justice in an effective and trustworthy judicial system.

The clear regulations regarding *partij verzet* and *darden verzet* in the *Herziene Inlandsch Reglement (HIR)* and *Rechtsreglement voor de Buitengewesten (RBg)* ensure that every party involved in a case has an equal opportunity to lodge opposition and uphold their rights. This underscores the importance of legal certainty in maintaining the integrity and credibility of the judicial process, thus allowing the public to have confidence that court decisions are based on principles of fair and transparent law.

CONCLUSION

Partij verzet, or opposition by the party involved, is a legal recourse under Articles 207 of the *Herziene Inlandsch Reglement (HIR)* and 225 of the *Rechtsreglement voor de Buitengewesten (RBg)*, allowing the executed party to challenge the execution of property rights over land. Research reveals that such opposition does not automatically halt the execution unless there are compelling reasons accepted by the court. The filing must comply with the formal and material requirements stipulated in Article 224 of the *HIR*, focusing on procedural validity and the substance of the execution. Case studies from the South Jakarta District Court and Kendal District Court show that successful opposition hinges on presenting strong and relevant legal arguments. Civil procedural law, which regulates various forms of opposition including *verzet* to default judgments, *partij verzet*, and *darden verzet*, plays a pivotal role in ensuring legal certainty and protecting the rights of aggrieved parties.

⁵³ Mohammad Amir Hamzah, "Reform Of Civil Procedural Law At The Appellate-Level Courts In Indonesia", *Mimbar Hukum* 28, no. 2 (2016): 348, DOI: <https://doi.org/10.22146/jmh.16723>.

⁵⁴ Interview with Mr. Intan Panji Nasarani, Judge at Bandung District Court Class 1A Special [June 27, 2024].

Experts like Yahya Harahap and Sudikno Mertokusumo highlight that civil procedural law offers the necessary flexibility and certainty to ensure justice, as it allows courts to consider diverse grounds for opposition and provides a fair platform for affected parties to assert their rights.

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