

Original Research Article

## Legal Protection for Creditors as Winners in Courts not Accompanied by Collateral Confiscation

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**Abstract:** This article examines and analyzes the trial process in court, particularly in cases of breach of contract or default. The research method used is normative legal research, which studies and analyzes Decision No. 224/Pdt.G/2021/PN.MLG concerning debtor default and legal protection for creditors who obtain a favorable court ruling against a defaulting debtor but without the enforcement of a security seizure (*conservatoire beslag*). The results indicate that the panel of judges, in their considerations, applied fair and balanced legal principles by ruling that the defendant was in default. However, the request for security seizure was denied due to the absence of urgent grounds for such an action. To protect the interests of the plaintiff or creditor, the execution process of the court ruling can be pursued, whereby the relevant court will issue a warning (*Aanmaning*) to the debtor or defendant to voluntarily comply with the ruling. If this effort fails, the court will enforce an execution seizure on the defendant's or debtor's assets. These assets will then be auctioned, and the proceeds will be used to settle the defendant's obligations fully.

**Keywords:** Legal protection, Creditor, and Security Siat.

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### 1. INTRODUCTION

In the case of debt and credit, the debtor or borrower commits an act of default (default), and the creditor will file a default lawsuit in the local district court; this is done in order to provide legal certainty for the creditor (Ariana, 2014). Generally, the creditor will request bail confiscation (*conservatoire beslaag*) to the panel of judges to place the bail confiscation on the assets owned by the debtor (Asri, 2009).

According to Sudikno Mertokusumo, confiscation is a preparatory action as a guarantee for the implementation of civil decisions, the assets contained in the bail confiscation are the interests of the plaintiff (creditor) (Bernard, 2010). This means that the goods are stored (conserved) as collateral and may not be transferred or sold as stipulated in Article 197 paragraph (9), Article 199 HIR, and Article 214 Rbg (H.R. Daeng, 2021). *Conservatoire beslaag*, or an application for a security seizure against the property of the defendant or debtor, is the interest in including a security seizure in the trial process so that the defendant does not transfer the object to another person (Joni, 2021). This article examines and analyzes the basis for the judge's legal reasoning in case No. 224/Pdt.G/2021/PN.MLG and the legal protection for creditors who obtain a court decision

that wins over the debtor but is not followed by the placement of a security seizure (*conservatoire beslag*).

### 2. RESEARCH METHOD

The research method used in this article is normative legal research, which aims to review and analyze Decision No. 224/Pdt.G/2021/PN.MLG related to debtor default and legal protection for creditors. This research mainly explores how creditors who obtain a court decision that wins a lawsuit against a defaulting debtor still face legal obstacles due to the absence of a security confiscation order (*conservatoire beslag*). For this reason, this research applies a statutory and case approach, as Ronny (1990) proposed. The statutory approach examines regulations governing default and creditor protection mechanisms. In contrast, the case approach is applied by analyzing relevant court decisions to understand the application of law in practice.

### 3. RESULTS AND DISCUSSION

#### The basis for Judges' Consideration in Case Number 224/Pdt.G/2021/PN.Mlg

In case number 224/Pdt.G/2021/PN.Mlg at the Malang District Court, East Java Indonesia, the judge, before giving a decision, examines legal facts as a basis for consideration to give a decision in a default case

committed by a debtor against a creditor. These legal facts are an important basis for judges to evaluate whether creditors deserve compensation or other forms of legal protection from defaulting debtors based on the provisions of Article 1243 of the Civil Code, which regulates the right of creditors to claim compensation if the debtor fails to fulfill his obligations (Abdul Kadir, 1982).

In this case, the judge's considerations are as follows: The judge considered the principle of *pacta sunt servanda*, which states that agreements legally bind the party's law. The judge also considered the importance of good faith in every contract or agreement. In this case, the debtor was deemed to have failed to fulfill its obligations without evidence and valid reasons. In addition to substantive legal considerations, the judge also considered procedural aspects in handling this case (J. Satrio, 2007).

Furthermore, the judge also considered the material and immaterial losses suffered by the creditor due to the debtor's default. The court recognized these material losses as the basis for creditors to demand compensation. In other considerations, the judge also highlighted the importance of justice in the judicial process (Lili, 2012). The decision tries to reflect the principle of justice by giving the entitled parties the appropriate rights and providing space for the debtor to explain his position (Mohammad, 2004).

Furthermore, in the above case related to legal protection that creditors can receive, the Indonesian civil law system has a vital role in ensuring that their rights can be fulfilled when a dispute occurs with the debtor, such circumstances require the need to establish legal regulations on a strong guarantee institution, which can meet the demands and needs of the times. In the context of disputes involving default, a court ruling in favor of creditors should give them full rights to execute the debtor's assets to fulfill payment obligations that have been neglected (Rocky, 2021). However, in practice, creditors often face challenges in executing the judgment, especially when the judgment is not accompanied by placing a security seizure or conservatoire beslag on the debtor's assets. Bail confiscation is a preventive legal measure that can be applied in the early stages of a lawsuit to ensure that the debtor's assets remain safe during the litigation process. The absence of a security seizure causes creditors to experience significant difficulties in executing the debtor's assets that have been won (Salim, 2003).

From a juridical perspective, legal protection for creditors who have won a case is critical, considering that the provisions of Articles 1131 and 1132 of the Civil Code state that all of the debtor's assets are collateral for creditors, where creditors can take repayment from each of the debtor's assets whose bills are only secured by the debtor's property, not by the debtor's person (Satjipto,

2014). However, these articles are often insufficient to protect creditors in practice. Without the placement of a security seizure, the debtor can transfer assets before the judgment is executed, making the legal protection promised by the law ineffective. The court can grant an application for a security seizure early in the proceedings, as stipulated in Article 226 HIR (Dermina, 2017). On the other hand, the court also needs to increase responsiveness to this request because execution can only be postponed if there are valid legal reasons, namely humanity, third-party resistance (*derden verzet*), the object of execution is still in another case, and there is a judicial review. Many creditors do not realize they can apply for collateral confiscation during the lawsuit process, which makes them miss the opportunity to get better legal protection. Thus, creditors need to be educated (Fikrotul, 2019).

In the case of Malang District Court Decision Number: 224/Pdt.G/2021/Pn. Mlg jo. was not equipped with a security seizure. Surabaya High Court Decision Number: 339/PDT/2022/PTSBY jo. Supreme Court Decision Number: 5072K/PDT/2022, then the creditor has submitted a request for the implementation of the contents of the decision with the following procedure: The party who won the case (Execution Applicant) applies to the chairman of the district court to implement the contents of the decision that has been legally binding (*inkracht van gewijsde*). This request is submitted in writing by stating the identity of the parties, the case number, and the verdict for which execution is requested. The legal basis is Article 195 HIR (Herzien Inlandsch Reglement) / Article 207 RBg (Rechtsreglement voor de Buitengewesten).

Then, the court's President examines whether the decision submitted for execution already has permanent legal force and can be executed. Decisions that can be executed are those that are condemnatoir in nature, namely decisions that contain orders to do or not do something, not just declarative or constitutive. Legal Basis Article 196 HIR / Article 208 RBg. After the request for execution is approved, the court chairman will issue a stipulation of execution, which is the basis on which the bailiff can execute the decision. This stipulation contains an order to the clerk and bailiff to execute the verdict by the contents of the verdict. Legal Basis Article 195 HIR / Article 207 RBg.

Before carrying out forced execution, the court chairman summons the defendant to give a warning (*aanmaning*) to carry out the decision within the specified period voluntarily. *Aanmaning* is the last resort before forced execution is carried out. Legal Basis Article 196 HIR / Article 207 RBg. Execution can be in the form of confiscation of goods, auction, emptying of assets, or other actions by the verdict. Legal Basis Article 200 HIR / Article 218 RBg. The legal aspects underlying the importance of security seizure are explained in Article 1131 of the Civil Code, which states that all of

the debtor's assets become collateral for creditors. However, this article is often challenging to implement without a security seizure.

In this case, the ignorance of creditors or the unclear process of applying for a security seizure are the main obstacles that cause many decisions not to be accompanied by this preventive protection. Therefore, the court should provide more explicit guidance and expedite the process of applying for a security seizure to guarantee creditors' rights. Without a security seizure, many creditors cannot execute assets they would otherwise have access to for debt repayment, even after a court judgment in their favor. Therefore, creditors can apply for execution seizures, where execution seizures can be carried out as a continuation of security seizures and where there has been no security seizure before.

### **Legal Protection for Creditors Who Obtain a Winning Court Decision on a Debtor but Not Followed by the Placement of a Security Confiscation (Conservatoir Beslag)**

In the regulatory aspect, it is necessary to improve the rules that ensure that applications for bail confiscation are processed quickly and fairly, given the importance of protecting creditors. The party who wins the case (Execution Applicant) applies to the chairman of the district court to execute the contents of a decision that has permanent legal force (inkracht van gewijsde). This request is submitted in writing by stating the identity of the parties, the case number, and the verdict for which execution is requested. Legal Basis Article 195 HIR (Herzien Inlandsch Reglement) / Article 207 RBg (Rechtsreglement voor de Buitengewesten). The procedure for requesting the implementation of the contents of the decision or execution submitted by the creditor to the district court is in line with the theory of legal protection, which focuses on the state's efforts to guarantee the rights of interested parties through legal channels. Legal protection is realized by guaranteeing that every party obtains justice through a fair judicial process and implementing decisions with permanent legal force. By submitting an execution petition, the creditor, as the Execution Applicant, obtains certainty that the rights the court has decided will be protected and appropriately executed (Manan, 2011).

One of the main principles in legal protection is legal certainty, which means that the rights determined and recognized through court decisions must be realized. Through the execution procedure, the state is present as an executor who ensures that the creditor's rights do not only stop at the verdict level but are realized concretely, in this case, through the implementation of execution seizure against the defendant's assets. The legal basis for the request for execution, namely Article 195 HIR and Article 207 RBg, makes it clear that the creditor has a legal basis to demand the execution of the judgment (J.H. Sinaulan, 2018).

The president of the court examines whether the decision submitted for execution already has permanent legal force and can be executed. Decisions that can be executed are those that are condemnatory in nature, namely decisions that contain orders to do or not do something, not just declarative or constitutive. Legal Basis Article 196 HIR / Article 208 RBg. For this reason, the chairman of the Malang District Court conducted the first warning on April 25, 2024, to remind the Defendant or Debtor to implement the contents of the decision immediately. However, the Defendant did not voluntarily implement it, so the court must immediately set an execution seizure. After the request for execution from the creditor was approved, the Chairman of the Malang District Court issued a stipulation of execution on Thursday, March 28, 2024, with Case Number 16/Pdt.Eks/2024/PN Mlg. This stipulation of execution is a valid legal basis for the bailiff to execute by the ruling that has permanent legal force. In the stipulation, the court president orders the clerk and bailiff to execute the ruling and applicable legal procedures immediately.

The stipulation of execution includes explicit instructions to the court clerk and bailiff to take the necessary execution actions to ensure that the execution of the verdict is carried out correctly and by the provisions of the law. In this case, the legal basis for the issuance of the stipulation of execution refers to the provisions of Article 195 HIR (Herzien Inlandsch Reglement) and Article 207 RBg (Rechtsreglement voor de Buitengewesten), which authorize the court to issue an execution order against a condemnatory judgment or a judgment that obliges one of the parties to perform a specific action. The stipulation of execution was made on Friday, May 31, 2024, by the chairman of the Malang District Court.

With this stipulation, the execution has a strong foundation so the bailiff can carry it out legally. This stipulation also ensures that the execution is not an arbitrary action but a legal effort carried out by court order. Before carrying out forced execution, the head of the court summons the defendant to give a warning (aanmaning) to voluntarily carry out the decision within the specified period. Aanmaning is the last resort before forced execution is carried out. Legal Basis Article 196 HIR / Article 207 RBg.

If the defendant still does not execute the judgment voluntarily, the court will execute by force. Bailiffs carry out this process, and in some cases, the court may request the assistance of security forces to ensure the execution goes smoothly. Execution can take the form of confiscation of goods, auction, emptying of assets, or other actions by the verdict. Legal Basis Article 200 HIR / Article 218 RBg. However, before the execution is carried out, matching or constituting must first be carried out on the object of the execution seizure, which in this case was carried out on Wednesday, July 24, 2024, in the area of the object of execution.

#### 4. CONCLUSIONS

The consideration given by the judge in the decision of Case No. 224/Pdt.G/2021/PN.Mlg considers that the debtor has failed to fulfill its obligations per the agreed agreement, so the creditor has the right to demand fulfillment of the agreement or compensation. This decision refers to various legal principles, such as the principle of *pacta sunt servanda* and the principle of good faith. However, what is unfortunate is that the Panel of Judges did not grant the Plaintiff's request for collateral confiscation, which can make it difficult for the Plaintiff later to implement the contents of the decision if the Defendant does not implement it voluntarily.

Related to legal protection for creditors not accompanied by a security seizure in the leading case decision is by submitting a request to implement the contents of the decision to the relevant court. The application for execution of the judgment enables the creditor to obtain the court's support in executing the judgment, which becomes more important when the debtor does not voluntarily fulfill its obligations. If the court approves the application, the court president can issue an execution order, which is the basis for the bailiff to execute the judgment against the debtor's assets. This execution order prevents the debtor from diverting assets that should be used to fulfill the creditor's rights, thus providing legal certainty and adequate protection for the creditor in executing the judgment.

#### REFERENCES

- Abdulkadir, Muhammad. (1982). *Hukum perikatan. Alumni*.
- Arfiana Novera, & Meria Utama. (2014). *Dasar-dasar hukum kontrak dan arbitrase*. Tunggal Mandiri.
- Asri, Wijayanti. (2009). *Hukum ketenagakerjaan pasca reformasi*. Sinar Grafika.
- Bernard L. Tanya, dkk. (2010). *Teori hukum: Strategi tertib manusia lintas ruang generasi*. Genta Publishing.
- Daeng Naja, H. R. (2005). *Hukum kredit dan bank garansi: The bankers hand book*. PT Citra Aditya Bakti.
- Dsalimunthe, D. (2017). Akibat hukum wanprestasi dalam perspektif Kitab Undang-Undang Hukum Perdata (BW). *Jurnal Al-Maqasid*, 3(1), 1–20.
- Emirzon, J., & Sadi, M. (2021). *Hukum kontrak: Teori dan praktik*. Kencana.
- Jadida, F. (2021). *Perlindungan hukum bagi kreditur terhadap pelaksanaan eksekusi jaminan fidusia (Analisis Putusan Mahkamah Konstitusi No 18/PUU-XVII/2019)* [Tesis, Universitas Indonesia].
- Lili Rasjidi, & I. B. Wysa Putra. (2012). *Hukum sebagai suatu sistem*. Remaja Rusdakarya.
- Makarao, M. T. (2004). *Pokok-pokok hukum acara perdata*. Rineka Cipta.
- Manan, H. A. (2011). *Eksekusi dan lelang dalam hukum acara perdata*. Makalah Rakernas Mahkamah Agung dengan Pengadilan Seluruh Indonesia.
- Marbun, R., dkk. (2021). *Hukum acara pidana: Landasan filosofis, teoretis, dan konseptual*. Publica Indonesia Utama.
- Satrio, J. (2007). *Hukum jaminan: Hak-hak jaminan kebendaan*. PT Citra Aditya Bakti.
- Soemitro, R. H. (1990). *Metodologi penelitian hukum dan jurimetri*. Ghalia Indonesia.
- Salim, H. S. (2003). *Hukum kontrak: Teori dan teknik penyusunan kontrak*. Sinar Grafika.
- Sinaulan, J. H. (2018). Perlindungan hukum terhadap warga masyarakat. *Jurnal IDEAS*, 4(1), 1–15.
- Rahardjo, S. (2014). *Ilmu hukum*. Citra Aditya Bakti.

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