

The Essence of Implementation of Condemnation of Civil Judges' Decisions in the Jurisdiction of the Makassar High Court

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The purpose of this study is to analyse the nature of the implementation of condemnation decisions on civil cases in the Makassar High Court Legal Area. The method used by the researcher here is Research, in general, can be classified into two types, namely sociological (field) and empirical research. The study results showed that the Implementation of Punishment Decisions (Condemnatoir) Against Civil Cases in the Makassar High Court Legal Area was not implemented. , Facilities and facilities, and legal substance.

Keywords: Decision; Judge; Condemnation

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I. Introduction

To the Law of the Republic of Indonesia Number. 48 of 2009 concerning Judicial Power, Article 1 states that judicial power is the power of an independent state to administer the judiciary to enforce law and justice based on Pancasila for the implementation of the constitutional state of the Republic of Indonesia (the 1945 Constitution of the Republic of Indonesia Article 1 paragraph 3).^[1] Thus the administration of justice which is based on simple, fast and low cost is essentially aimed and has the core of providing justice where judges carry out activities and actions in the process of a civil case. Judges and their obligations under Chapter IV,^[2] Law No. 48 of 2009 it is stated that:

- 1) Judges are obliged to explore, follow and understand the legal values and sense of justice that live in society.
- 2) In considering the severity of the crime, the judge must pay attention to the good and evil nature of the defendant.

Likewise, civil judges always pay attention to and remember their oaths and/or office premises following their code of ethics. In addition, in the Law of the Republic of Indonesia Number. 48 of 2009 concerning Judicial Power, it is expressly stated that judges are officials who exercise judicial power as regulated by law, judges must have integrity and a personality that is not reprehensible, honest, fair, professional and experienced in the field of law and in carrying out their duties and functions. Judges are obliged to maintain the independence of the judiciary.^[3]

In the case of a judge adjudicating a case, especially a civil case by using statutory regulations such as *Reglement op de Burgerlijk Rechtsuordering (RV)*, *Herzein Indonesia Reglement (HIR)*, *Buitengewestern Rechtsreglement (RBg)*, the Civil Code (KUHP Perdata)), Law No. 48 of 2009 concerning Judicial Power as a legal basis for adjudicating a civil case which is also the main task and plays a very important role in this judicial body as well as includes three definitions, namely:^[4]

- 1) Resolving a case by giving a justice
- 2) Enforce the law and
- 3) Forming law

In the settlement of a civil case, the judge automatically gives a decision. However, not all judges' decisions can be enforced in the true sense of the word by force by the court. Only **condemnatory** can be enforced. decisions **Declaratoir** and **constitutive** do not require coercive means to implement them. Because there is no right to achievement, the occurrence of legal consequences does not depend on the assistance or willingness of the defeated party, therefore, there is no need for coercive means to carry it out. A judge's decision that has obtained definite (permanent) legal force can be carried out voluntarily by the person concerned, namely by the defeated party. If a civil case has been decided and obtains definite (permanent) legal force, the defeated party can voluntarily implement the decision.

In addition to *declaratory* and *constitutive decisions*, there are also *condemnatory* decisions, namely decisions that punish the losing party to fulfil an achievement set by the judge. In this decision, the civil rights of the plaintiff that he demanded against the defendant were recognized by the judge before the court session.^[5] decision *condemnation* there is a justification for the plaintiff's right to achievement he demands or vice versa there is no acknowledgement or no justification for an achievement he demands. The case for an achievement that is demanded by the judge is justified which is stipulated in a *condemnatory* and this can be enforced by force.

The phenomenon shows in the field (Makassar District Court) that in the last three years, 2019 to 2021, there have been several condemnatory decisions on civil cases. Even so, the number of decisions has increased. So that it can be stated how the implementation of a condemnatory decision is carried out at the Makassar District Court and what factors influence it so that the decision can be executed. There are predictors including legal substance, facilities and facilities, legal knowledge of justice seekers, community legal culture and legal knowledge of civil judges. By achieving the benefits of legal objectives, namely justice and legal certainty in the civil sector. Whereas it is hoped that a *condemnatory* least reduce the accumulation of civil cases at the cassation level.

II. Research Methods

Research, in general, can be classified into two types, namely empirical sociological (field) research, namely research conducted with an approach to legal reality in society. This research is based on the existence of a symptom in the form of a gap between expectations (*das solen*) and reality (*das Sein*) in the field of law. and normative research, namely research conducted with an approach to legal norms or substance, legal principles, legal theory, legal arguments and legal comparisons. In this study, the author combines the two studies, namely in this type of research the researcher conducts research by combining both types of normative and empirical research with a qualitative approach as mentioned above in a study. This research was conducted in the Makassar High Court Legal Area:

1. Makassar District Court
2. Maros District Court
3. Pangkep District Court

III. Discussion

A. The nature of the implementation of a judgment that is convicting in nature (condemnatory) against a civil case

Condemnation or condemnation is the nature of a decision that in its decree punishes one of the litigants and the sentence imposed is in the form of a relationship or legal action that must be obeyed, carried out and fulfilled by the Defendant (defeated side). Regarding the characteristics of the condemnation's decision, it contains an order or dictum which contains the sentence: Punishing to pay, surrender, disassemble, divide, and so on. decision *condemnatory* is a decision whose ruling or dictum contains an element of "punishment" and by itself is inherent in the power of executorial law so that the decision can be executed if the defendant does not want to carry out the decision voluntarily.

Execution in civil cases is a tiring process, consuming energy, money and thought. Civil decisions do not yet have any meaning when the defeated party is not willing to carry out the decision voluntarily. Real victory can only be achieved after going through a long process of execution to realize the victory.^[6] The execution process became long and complicated because the defeated party was difficult to accept the verdict and did not want to carry out the obligations imposed on him. The culmination of a civil case is when a judge's decision that has permanent legal force (*inkracht van gewijsde*) can be implemented.

In execution of execution, some principles are used in the execution of the execution. These principles include:

1. Decisions that can be executed are decisions that have permanent legal force.

The decisions that have permanent legal force can be in the form of:

1. First-level court decisions that are not requested for a re-examination (appeal) or cassation because they have been accepted by the litigants.
2. Court decisions at the appeals level have not been appealed to the Supreme Court.
3. Court decisions on cassation level from the Supreme Court or judicial review decisions from the Supreme Court.
4. decision *Verstek* from the court of the first instance which was not filed for legal action.
- e. The decision is the result of reconciliation between the two litigants.

The Makassar District Court is one of the judicial bodies of the first level (*judex facti*) or it can also be said to be an everyday court that directly adjudicates civil and criminal cases that are submitted to it. So basically all district courts throughout Indonesia are equal in position, namely the courts of the first instance. It's just that the difference lies in their competence and size based on their jurisdiction, location and number of cases

being tried. This means that jurisdiction is important for the Makassar District Court of its relative authority (relative competence) in adjudicating a case. The jurisdiction of the district court covers one level II area (district or municipality).

Based on the location (in the provincial capital, municipality or regency) and the number of cases, 2 (two) classes are determined, namely Class I (AB) and Class II (AB). According to the pattern concerning the classification of district courts and the establishment of high courts/district courts (SK. MENKEH RI dated August 14, 1977, No. JS 1/7/5 of 1977), district courts domiciled in the Capital of Provinces/Regions Level I are designated as class district courts. I, while other district courts are designated as class I and class II district courts according to the circumstances of the case. Class, I district courts are divided into class IA and class IB. classified as a class IA district court if in one year the civil cases are 300 and above and the criminal cases are 800 and above (not including zero cases). Meanwhile, the number of civil cases between 150 and the number of criminal cases between the number of 400 to 800 in one year are classified into Class IB. as for those classified into Class IIA, namely if the number of civil cases is between 60 to 150 and the number of criminal cases is between 200 to 400 in one year. While class II B if the number of civil cases is less than 60 and the number of criminal cases is less than 200 in one year.

Based on the classification above, where the Makassar District Court is a class I court, the number of civil cases and criminal cases are not determined regardless of whether or not the case is terminated. Thus the existence of the Makassar District Court as one of the organs of the judicial system in Indonesia will be tested for its quality/credibility.

B. Sentencing Decisions (Condemnatoir) Against Civil Cases in the Makassar High Court Legal Area

1. Analysis of Punishing Civil Judge Decisions (Condemnatoir)

Analysis of the three civil law cases with condemnatory judges' decisions at the Makassar District Court with a socio-juridical approach includes the following factors:

1. Internal factors include:
 - a. Legal substance
 - b. Facilities and facilities
 - c. The volume of civil cases
 - d. Legal knowledge of civil judges
2. External factors include
 - a. Knowledge of justice seeker law
 - b. The legal culture of the community

These two factors with indicators are used as benchmarks in analyzing the civil judge's decision on the case.

a. The verdict of the civil judge in the first case

1. The situation
case in this first case is the claim for divorce by the plaintiff (wife) against the defendant (husband). As a result, the law is legal for divorce in marriage, child custody rights and the distribution of goods and services. The contents of the lawsuit include

- a) The court declares the marriage of both parties to be dissolved (divorce)
 - b) Gono-Gini assets in the form of land and buildings, the court places marital confiscation to avoid abuse of rights
 - c) Order the defendant to pay court fees.
- 2) Exception (Defendant's answer)
- a) Defendant rejects all the arguments put forward by the plaintiff
 - b) The plaintiff's claim is vague and unclear (obscure libel)
 - c) The lawsuit should not include a lawsuit
 - d) The plaintiff's claim should not be accepted

. In the main case:

- a) Plaintiff and defendant are legal husbands and wife
- b) It is not true that the plaintiff in his lawsuit stated that the defendant often tortured the plaintiff so that he was injured
- c) It is not true that the plaintiff in his lawsuit stated that the defendant had never provided a living for the plaintiff
- d) The defendant also has self-respect because the plaintiff slandered and made the defendant a cash cow.

In conclusion, the plaintiff made a fabricated excuse. Therefore, the defendant asked the panel of judges to make their decision read:

- a) Accept the defendant's exception in its entirety and declare the plaintiff's claim unacceptable
- b) Or if the panel of judges examining this case has a different opinion, asking for fairness and justice.

Furthermore, to strengthen the plaintiff's arguments, the plaintiff attaches several photocopies/information related to the case and also submits 2 witnesses under oath. Regarding the law, the purpose of the plaintiff's lawsuit is divorce and other goods and the position of the child. The defendant has also answered and dismissed the lawsuit.

The judge's decisions are:

- 1) Dismiss the plaintiff's claim in part
- 2) Stating that their marriage broke up due to divorce
- 3) Order the clerk of the Makassar District Court to send a copy of this decision to the civil registry office
- 4) Charges court fees to the defendant
- 5) Rejecting the plaintiff's claim other than the rest

In the case above, the judge's condemnatory decision can be stated that:

- 1) The decision of the civil judge has implemented its legal application to the case in the corridor of the Civil Code and its Procedural Law concerning marriage (Chapter IV of the Civil Code)
- 2) Not all of the plaintiff's requests were granted (only partially accepted) the only application received was a valid divorce and the defendant paid court fees
- 3) The plaintiff's request about placing the marital confiscation on land and buildings as goods of this kind was not granted by the panel of judges
- 4) The status of the child is not decided by the panel of judges

. Thus, the decision of the civil judge in this condemnation case is correct, because what was decided was based on statutory regulations or the application of the Civil Code (Chapter IV on marriage and divorce) along with the procedural law. The civil judge decides based on valid evidence with witnesses under oath on the basis that only a part of the petition is granted.

b. The decision of the civil judge in the second case

This second case or civil case is related to land. As the object of dispute. The plaintiff's lawsuit contains, among others:

- 1) The plaintiff has a legal relationship with the defendant
- 2) The plaintiff is the owner of the land/building occupied by the defendant.
- 3) Land and buildings from 1981 until now are against the law
- 4) The plaintiff has met the defendant to resolve the issue but to no avail
- 5) Plaintiff has reported to the police
- 6) Therefore, the plaintiff asks the panel of judges to punish the defendant to hand over the land belonging to the plaintiff
- 7) Sentencing the defendant to pay court fees

The defendant's exceptions are as follows:

- 1) The capacity of the plaintiff is not clear who he represents
- 2) The land being sued by the plaintiff also belongs to the other heirs
- 3) Land as the object of this dispute is State land. In the main case:
 - 1) That everything stated in the exception is repeated in the answer to the main case
 - 2) The Defendant strongly denied the entire claim of the plaintiff
 - 3) That the location of the land of each party is given rights by the Makassar City Government
 - 4) That the one who was given the right (Ottoman) had died
 - 5) The police did not process the dispute
 - 6) Therefore, there is no reason to sue

. In the exception, it states that it accepts the exception from the defendant in its entirety and states that the plaintiff's claim cannot be accepted. In the main case, it is stated:

- 1) Reject the answer from the defendant in its entirety.
- 2) Reject the plaintiff's claim in its entirety
- 3) Sentencing the defendant to pay the costs incurred in the examination of this case

By the judge has burdened the proof of both the plaintiff and the defendant as well as the witnesses under oath. In addition, the plaintiff completes the letter and photocopy required in his lawsuit. The decision of the panel of civil judges is In the exception Stating the defendant's exception cannot be accepted in the main case:

- 1) Accept the plaintiff's claim in part
- 2) Stating that the plaintiff has a legal relationship with the defendant
- 3) Stating that the land located on Jalan Tanjung Dapura belongs to the plaintiff based on the deed
- 4) Punish the defendant to surrender the land in any vacant state on it
- 5) Sentencing the defendant to pay court fees

6) Rejecting the plaintiff's claim for the rest, In this case, it can be seen that not all of the petitions for claiming were granted, only some of them mainly land as the object of dispute. While the building above it or the argument is not accepted the application of the law is following the laws and regulations (Civil Code and its Procedural Law) and regulations concerning land, the judge's decision is based on written and unwritten evidence (documents and witnesses who have been sworn in court).

C. Factors that influence condemnatory decisions on civil cases

The essence and meaning of law enforcement conceptually lie in the activity of harmonizing the relationship of values outlined in the rules of attitude and action to create, maintain and maintain peaceful life association. Meanwhile, law enforcement as a process is essentially the application of discretion regarding making decisions that are not strictly regulated by the rule of law but have an element of personal judgment. Therefore, to produce law enforcement, including in this case law enforcement against condemnatory decisions in civil cases, conceptual law enforcement and law enforcement as a process must be realized with indicators that the factors that influence decisions that are punishment (condemnation) of civil cases must be with the following conditions:

1. Legal knowledge.

The respondents' responses to the influence of legal knowledge on condemnatory decisions in civil cases can be seen in the following table:

Table 1 Respondents' answers about the effect of legal knowledge on condemnatory decisions in civil cases

Results	Frequency/respondents	Percentage (%)
Influential	18	90 %
Not Influential	2	10 %
Total	20	100 %

Source: Primary Data for 2022.

Based on the table data above, shows the effect of legal knowledge on condemnatory decisions in civil cases, where respondents stated that it had an effect on 18 respondents and who stated that it had no effect were 2 respondents. This shows that the factor of legal knowledge in condemnatory decisions on civil cases is relatively influential.

1. Cultural Law

Culture according to Soerjono Soekanto, has a very large function for humans and society, namely to regulate so that humans can understand how they should act, act, and determine their attitudes when dealing with other people. Culture includes the values that underlie the applicable law, which values are abstract conceptions of what is considered good (so that it is embraced) and what is considered bad (so that it is avoided). Cultural factors have similarities with community factors. However, in the cultural factor, more emphasis is placed on the problem of the value system that exists in the community. In terms of community factors, it is said that the level of community compliance with community rules and regulations is still low. This is because there is a compromising culture that often occurs in Indonesian society. There will be a tendency for people's cultures to escape from the rules that apply to be so.

The responses of respondents about the influence of legal culture on decisions that are condemnatory in civil cases can be seen in the following table:

Table 2 Respondents' answers about the influence of legal culture on decisions that are punishing (condemnation) in civil cases

Results	Frequency/respondents	Percentage (%)
Influential	15	85 %
Not influential	5	15
Total	20	100 %

Source: Primary Data in 2022

Based on the data in the table above shows the influence of legal culture in condemnatory decisions on civil cases, where respondents obtained answers stating influential as many as 15 respondents and who stated no effect as many as 5 respondents. This shows that the factor of legal culture in condemnatory decisions on civil cases is relatively influential.

2. Legal

Substance means the rules, norms, and behaviour patterns of people in the actual system. The emphasis is on living *law*, not just regulations in legislation (*law in the book*). The substance or content of the law as a reference in law enforcement has an important role as a guide or guide for law enforcers in carrying out their authority. This means that the weakness of the content of the law will result in ineffective law enforcement so that the objectives to be achieved are not met. Legislation in this case is a manifestation of the provisions in the law relating to law enforcement against condemnatory decisions in civil cases.

Furthermore, respondents' responses about the effect of the legal substance on condemnatory decisions on civil cases can be seen in the following table.

Table 3. Respondents' answers regarding the effect of the legal substance on condemnatory decisions in civil cases

Category Answer	Frequency	Percentage
1. Influential	14	85 %
2. No effect	6	15%
Quantity	20	100

Source: Primary Data for 2021

Based on the data in Table 3 above, it shows that the respondents' responses regarding the effect of the legal substance on condemnatory decisions on civil cases, respondents who stated that they were influential were 14 respondents or 85%, stated that they had no effect as many as 6 respondents or 15%. This means that in general, the respondents stated that they were influential, so it can be said that the legal substance affected condemnatory decisions in civil cases.

IV. CONCLUSION

1. The nature of the implementation of judgments that are convicting in nature (condemnatory) against civil cases in the Makassar High Court is an effort carried out using a scientific approach to finding the truth about the upholding of norms based on the Civil Code and Law Number 48 of 2009 regarding judicial power
2. Implementing condemnatory decisions on civil cases in the Makassar High Court jurisdiction is not implemented
3. Factors influencing condemnatory decisions on civil cases in the Makassar High Court jurisdiction are legal knowledge, Legal Culture, Facilities and Facilities, and Legal Substance

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