

# International Journal of Judicial Law

## The Role of the Biliary in the Implementation of Decisions on Applications for Execution of Property Security in Semarang District Court

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### Article Info

ISSN (online): 2583-6536

Volume: 03

Issue: 05

September-October 2024

Received: 30-08-2024

Accepted: 15-09-2024

Page No: 35-38

### Abstract

In the implementation of credit in the community, there is a risk of default in repayment of credit. To anticipate default, creditors ask for collateral from debtors. The collateral can be in the form of material. If default still occurs, then one way to resolve it is through the courts. The process of resolving the default is decided by the Head of the District Court in each region, after which the Head of the District Court will assign a Bailiff to carry out the execution. The duties and functions of the Bailiff are not limited to carrying out the execution, but also the administrative duties of the court. In practice, the Functional Bailiff has been on duty in the field, but the guidelines for implementing the Bailiff's duties are still lacking. This then causes the Bailiff to also face obstacles. This research was written using a descriptive qualitative method with primary and secondary data sources as its supporters.

DOI: <https://doi.org/10.54660/IJL.2024.3.5.35-38>

**Keywords:** Role, Execution, Bailiff

### A. Introduction

In today's life, credit activities for personal and business matters have been embedded in society. In principle, if someone is short of funds, they will apply for credit from another party. The emergence of this credit will then become a credit loan agreement. In its implementation, collateral is needed as an anticipation of the risk of default in credit repayment<sup>[1]</sup>.

This guarantee can be in the form of material, or a guarantee in the form of movable or immovable property with the aim of guaranteeing the debtor's debt to the creditor<sup>[2]</sup>. In its implementation, credit agreements are often prone to disputes. The resolution of these disputes must not be done by taking the law into one's own hands, but rather by the applicable laws and regulations. One way that can be done to resolve a dispute is through the Court. Resolving problems in court requires energy, time and money<sup>[3]</sup>. The process of resolving problems in court is decided by the Head of the District Court in each of his/her working areas.

The District Court is the first level judicial body in an area where the lawsuit law is decided. Based on Law Number 48 of 2009 concerning the Supreme Court, the Chief Justice has duties and responsibilities for the implementation of civil case execution in their respective work areas. In essence, whether or not the execution request is granted is a right inherent in the position of the Chief Justice of the District Court<sup>[4]</sup>.

Based on the Supreme Court Execution Implementation Guidelines, the Head of the District Court who grants the execution request can immediately issue a letter of determination addressed to the Clerk or Bailiff to be able to carry out the execution in accordance with the related case.

<sup>1</sup> Juliantika, Kris. 2023. Execution of Fiduciary Guarantee Based on the Implementation of Executorial Title at Bank Mandiri Tunas Finance After the Constitutional Court Decision Number 18/PUU-XVII/2019 and the Constitutional Court Decision Number 2/PUU-XIX/2021. *Scientific Journal of Legal Science* Vol 3 Year 2023 Pp 250-259

<sup>2</sup> Pihang, Novalita Eka Christy. 2021. Legal Protection of Creditors Holding Material Collateral in the Process of Execution Auction of Collateral Related to Repeated Auction Costs. *Journal of Legal Science* Vol 12 No 21 Year 2021

<sup>3</sup> Hartini, Sri, Setaiti Widiastuti, Iffah Nurhayati. 2017. Execution of Judge's Decision in Civil Disputes at the Sleman District Court. *Civics Journal* Vol 14 Number 2 Year 2017

<sup>4</sup> Gayo, Ahyar Ari. 2022. Problematics of Civil Decision Execution Process in Indonesia in Order to Realize Court Excellence. *De Jure Legal Research Journal* Vol 22 Number 4 Year 2022

Execution itself has the essence of being an in kracht legal implementation, so it is mandatory to be implemented<sup>[5]</sup>.

The implementation of court decisions in the execution of property guarantee decisions is carried out by the Clerk and Bailiff led by the Head of the District Court. This is regulated in Article 54 paragraph (2) of Law No. 48 of 2009 concerning Judicial Power. The Bailiff himself is an official who works in court but does not sit behind the judge. Bailiffs are more often in the field than participating in trials behind the judge. Bailiffs work from the beginning until the execution of the decision, so that the results of his work have a great influence on court administration<sup>[6]</sup>.

The role of the Bailiff is currently still considered insignificant and in carrying out his duties and functions, the Bailiff still has minimal guidelines for carrying out executions<sup>[7]</sup>, especially the execution of material collateral. Based on the background above, the author will examine the Role of Bailiffs in the Implementation of Decisions on Applications for Execution of Material Collateral at the Semarang District Court.

## B. Formulation of the problem

1. What is the role of the Bailiff in the Application for Execution of Property Guarantee at the Semarang District Court?
2. What are the obstacles faced by the Bailiff in carrying out the Application for Execution of Property Collateral at the Semarang District Court?

What efforts are made by the Bailiff in carrying out the Application for Execution of Property Collateral at the Semarang District Court?

## C. Research methods

This research is a descriptive qualitative research. This means that the data findings or information found are descriptive in the form of data. The data sources are primary and secondary data sources. The locus of this research is the Semarang District Court and the focus of this research is the role of the Bailiff in the implementation of the Application for Execution of Material Collateral.

## D. Discussion

### A. The Role of Bailiffs in Applications for Execution of Property Guarantees at the Semarang District Court

The word Bailiff is derived from the Dutch language *deurwaarder*. The job of a Bailiff has existed since the Dutch era. The Bailiff himself is currently one of the functional positions in the Court, he is appointed upon the recommendation of the Chief Justice. The existence of a Bailiff is one of the keys to the administration of cases. The Bailiff is also part of the court clerk, so that in several matters the Bailiff is responsible and coordinates with the Clerk<sup>[8]</sup>.

Based on the Official Website of the Supreme Court, there

are at least 6 (six) duties and functions of the Bailiff, namely:

1. Carrying out court summons to the parties involved in the case
2. Implementing notification of decisions of the District Court, High Court and Supreme Court of the Republic of Indonesia to the parties to the case.
3. Carrying out the submission of minutes to the litigants
4. Carrying out a warning summons (warning) to the defendant in the seizure, the defendant in the execution
5. Carrying out execution seizures and making minutes in accordance with the determination of the Head of the District Court
6. Carrying out notification of appeals and cassation in criminal cases to the person concerned.

From the explanation above, it can be described that the Bailiff has a duty not only as a messenger of the summons, but also to deliver notification of both the verdict and legal efforts. In addition, the Bailiff also has a role as an executor in the execution of the verdict<sup>[9]</sup>.

Meanwhile, based on the Decision of the Supreme Court of the Republic of Indonesia SK 004/SK/11/92, it states that the Bailiff is part of the Clerk's Office. Where as a judicial official, the Bailiff's responsibility is to the Institution, while in administrative matters the Bailiff's responsibility is to the Clerk<sup>[10]</sup>.

There are several conditions for a valid and appropriate summons for the Bailiff in carrying out his duties, including, who is calling, how to call and the time limit for the summons<sup>[11]</sup>.

In Case Number 10/Pdt.GS/2023/PN Sng, the author analyzes the role of the Bailiff in carrying out his duties and functions as follows:

### 1) Summons

In accordance with the case application letter submitted by Akbar Budi Prakoso, SH as a representative of the Graha Mandiri Savings and Loans Cooperative, Pemuda Branch to the Head of the Semarang District Court on January 17, 2023, the Head of the Semarang District Court assigned a Bailiff on behalf of Tony Rachardiyanto on February 29, 2024 to issue a summons to the defendant.

This task has been carried out by xxxxxx, by making a Summons Letter to the defendant xxxxxxx with Summons Letter Number 35/SPGL/2023 PN Sng dated March 4, 2023 concerning the Summons Letter to the Defendant on behalf of Lukas Indarto and the Plaintiff on behalf of the Graha Mandiri Savings and Loan Cooperative, Pemuda Branch represented by Akbar Budi Prakoso, SH. The Summons Letter has been received by both parties.

### 2) Decision Notification Letter

After the trial was held on March 20, 2023, the Bailiff on behalf of Tony Rachardiyanto notified the defendant and the

<sup>5</sup> Ibid., p.552

<sup>6</sup> Setiawan, Heru. 2019. Legal Protection for Defendants or Respondents Who Do Not Receive Direct Notification Release. Scientific Journal of the World of Law Vol 4 Number 1 of 2019.

<sup>7</sup> Lie, Erick Sambuari, Muhamad H. Soepeno, Adi T. Koesumo. 2023. Legal Implications of Parties Who Do Not Execute Court Decisions in Civil Cases. Lex Privatum Journal Vol XI No 3 Year 2023

<sup>8</sup> Setiawan. Op.Cit., p. 21

<sup>9</sup> Ibid. p. 22

<sup>10</sup> Oktarani, Putu Benny, Nyoman A. Martana, I Ketut Sujana. 2013. Comparison of Bailiff Extension in State Administrative Court Procedure Law Against Regional Court Procedure Law. Kertha Semaya Journal Vol 1, No 4 Year 2023

<sup>11</sup>Setiawan. Op.Cit., p. 22

applicant regarding the results of the trial. The results of the trial are stated in the Decision Notification Letter Number 43/Pdt.Eks/2024/PN Smg dated March 20, 2024 concerning the Decision. The defendant on behalf of Lukas Indarto has received the Decision Notification Letter on March 21, 2024, while the Applicant on behalf of the Graha Mandiri Savings and Loans Cooperative, Pemuda Branch, represented by Akbar Budi Prakoso, SH has received the decision notification letter on March 21, 2024.

In the Decision Notification Letter, it was also stated that the execution of the property guarantee would be carried out immediately.

### **Carrying out the Execution of Material Guarantees**

In accordance with the results of the trial decision and the implementation of the warning summons, the Bailiff on behalf of Tony Rachardiyanto then carried out the execution of the collateral. The execution was carried out on April 30, 2023 at the address Jalan Batan Miroto II No. 384, Miroto Village, Semarang Tengah District, Semarang City. The execution was carried out in accordance with the Task Order from the Head of the Semarang District Court Number 37/SP.Eks/2023 dated May 7, 2023, the results of which were then stated in the Minutes of Execution with Number 49/AHT.Eks/2023/PN Smg dated May 7, 2023

### **B. Obstacles for Bailiffs in Carrying Out the Duties of Executing Material Collateral at the Semarang District Court**

In carrying out his duties and functions as a Bailiff, there are often obstacles that arise. Especially when carrying out execution seizure duties in the field. Obstacles in the field that often arise are lack of personnel to inadequate funds<sup>[12]</sup>.

In addition to field constraints, administrative constraints were also found. The existence of errors in summons and notifications is the responsibility of the Bailiff. However, the rules related to summons and notifications themselves have not been clearly explained through law.

In Case Number 10/Pdt.GS/2023/PN Smg, the author analyzes the existence of obstacles for Bailiffs in carrying out their duties and functions as follows:

#### **1) Obstacles in the Field**

a. The existence of obstacles originating from natural or environmental conditions

During the execution, sometimes natural or environmental conditions greatly dominate the smoothness of the execution process<sup>[13]</sup>. When the Bailiff on behalf of Tony Rachardiyanto carried out his duties in accordance with 37/SP.Eks/2023 dated May 7, 2023, he experienced difficulties in the form of difficult access to Jalan Batan Miroto II No. 384, Miroto Village, Semarang Tengah District, Semarang City. This is because the location is a densely populated area so that access is limited. In addition, on that day the City of Semarang was facing a hot storm El-Nino so that the temperature in the area increased drastically.

### **There is a refusal from the defendant to be executed**

When the Bailiff on behalf of Tony Rachardiyanto, who was going to carry out the confiscation of a Honda Jazz Car with Police Number H89XXXP in Metallic Gray, the Bailiff experienced difficulties. The difficulties were in the form of the defendant's lack of openness regarding the storage of the Original BPKB and STNK. This caused an argument between the police, the bailiff's sub-district, residents of the surrounding area and the defendant.

#### **2) Administrative Barriers**

a. Administrative Data provided is fake/not found

Intersecting with the obstacles of rejection, the unavailability of complete administration on the collateral objects to be confiscated. This causes momentary chaos that disturbs the tranquility of the environment.

b. Letters to other agencies were not delivered on time

When the Bailiff on behalf of Tony Rachardiyanto carried out his duties, an obstacle was found, namely that the Miroto Sub-district had not prepared personnel who would accompany the execution of the seizure. This was because the Miroto Sub-district had only received a Notification Letter on the day of the execution.

#### **C. Efforts to overcome obstacles that have been made by Bailiffs in carrying out execution duties at the Semarang District Court**

1. Ensure that all letters relating to parties outside the Semarang District Court are delivered at least one day before the execution.
2. The negotiation and discussion skills of the Bailiff must be improved. It is expected that the Bailiff has a cool head and is not easily carried away by emotions.

### **3. Conclusion**

Based on the results of the author's analysis, it can be concluded that the Bailiff has a duty not only as a messenger of the summons, but also to convey notifications of both decisions and legal efforts. In addition, the Bailiff also has a role as an executor in the execution of the decision. In Case Number 10/Pdt.GS/2023/PN Smg, the role of the Bailiff in carrying out the execution of collateral has been carried out properly. However, there are still obstacles, both obstacles in the field and administrative obstacles.

It is known that there are several obstacles faced by the Bailiff, including conditions in the field, rejection from the defendant, data being found to be fake/not found and letters to the agency not being delivered on time.

To resolve this problem, the efforts made by the Bailiff are to ensure that all administration with parties outside the Semarang District Court has been submitted at least one day in advance and to improve the Bailiff's negotiation skills, if they encounter obstacles/debates in the field.

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<sup>12</sup> Gayo. Op.Cit., p. 135

<sup>13</sup> Kaligis, Mouna C. 2016. Responsibilities of Bailiffs/Replacement Bailiffs in the Trial Process in Court. Lex Privatum Vol IV No 8 Year 2016 Pages 14-17

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