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The concepts of arrangement in case fees in civil cases

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Abstract. The principle of paying court costs in civil courts is borne by the losing party. The payment for the court fee is taken from the down payment for the court fee paid by the plaintiff. The judge's decision regarding the imposition of court fees on the losing party is a punitive decision, so it must be carried out by the losing party. According to Abdul Kadir Muhamad, when a decision has been enforced, there is no longer any opportunity to use ordinary legal remedies against the decision. Therefore, the judge's decision which has permanent force (incracht van gewijsde) must be implemented without delay.

Keywords. civil, law, fees

Introduction
The principle of paying court costs in civil courts is borne by the losing party. The payment for the court fee is taken from the down payment for the court fee paid by the plaintiff. The judge's decision regarding the imposition of court fees on the losing party is a punitive decision, so it must be carried out by the losing party. According to Abdul Kadir Muhamad, when a decision has been enforced, there is no longer any opportunity to use ordinary legal remedies against the decision. Therefore, the judge's decision which has permanent force (incracht van gewijsde) must be implemented without delay. [1]

The Court's decision regarding the imposition of case fees which has permanent legal force should be carried out simultaneously with the execution of the principal case decision. However, in practice, court costs decisions are not executed because the winning party has never submitted an application for execution. This is because there are no rules that require the execution of court fees.

The non-implementation of the court's decision does not actually lie in the small nominal cost of the case, but legally it is an obligation for the losing party and a right for the winning party. Article 181 paragraph (1) HIR jo. Article 192 paragraph (1) Reglement Buitengewisten (Rbg), stipulates that case costs are borne by the losing party. [2] If the plaintiff's claim is granted in its entirety, meaning absolutely, the defendant is on the losing side, then the judge must bear the costs of the case to the defendant who lost the trial." The provisions of Article 181 paragraph (1) HIR and Article 192 paragraph (1) Rbg. is a court order, so the losing party should obey it, even though it becomes a burden and is felt to be inconsistent with the principles of justice.
In relation to the principle of imposing court costs and not carrying out court decisions regarding case costs that have permanent force, it is deemed necessary to find a solution by offering a concept related to the principle of charging case costs in an equitable manner, as well as the concept of implementing court decisions, so that they are in accordance with the principles of certainty and justice for the litigants. The formulation the problem taken is the concept of imposing court fees and executing court decisions in accordance with a sense of justice for the parties litigation.

**Research Methods**

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**Research Method and Discussion**

**The Essence of Court Decisions Imposing Case Fees**

The court's decision regarding the imposition of court costs on the losing party, in essence, is a burden on the losing party to pay court costs related to a legal case in which he is involved. The decision to charge court fees is condemnatory or punitive. Such character is understood from the Court's decision, with the sentence "punishing the defendant or plaintiff (as the losing party) to pay court costs". Considering that a court decision that has permanent legal force (inkracht van gewijsde) is an order from an authorized organ, it (the losing party) must be carried out. [3]

As said by Jhon Austin, a student of Jeremy Bentham stated that, "law is the command' of sovereign backed by sanctions". [4] John Austin, as the successor of Jeremy Bentham, in his "analytical legal positivism" also disagrees with school of natural law which is based on morality, ethics and justice. [5] According to John Austin, "command", or orders are the main elements or elements of the law, then John Austin also stated, that "laws or rules, properly so called, are a species of commands". [6] Law (positive) is called law because of the "command", and these orders are issued by people who have the authority to make orders.

**Execution Court Decisions Concerning the Charging of Case Fees**

The principle of charging case fees is regulated in Article 181 paragraph (1) HIR jo. Article 191 paragraph (1) Rbg, that the costs of the case shall be borne by the losing party. Such a principle is felt to be incompatible with a sense of justice for the losing party. In a proverb
known as "a ladder has fallen", that the losing party has lost its civil rights, still has to be burdened with the obligation to pay court fees. Moreover, if the judicial process is not carried out honestly, then the principle of imposing case costs on the losing party will further injure the losing party's sense of justice.

In addition to injustice often being used as an excuse for the losing party not to carry out the decision to pay the case, the Court also often experiences obstacles in carrying out the execution payment of court fees which is carried out simultaneously with execution of the main case, even though the decision is punitive in nature.

The main obstacle if the implementation of decision on the imposition of court costs is carried out together with the execution the main case, for example related to emptying or handing over an item that is object a lawsuit. If execution of court fees is carried out simultaneously with principal decision in this case, then in accordance with the nature of the execution it must be carried out thoroughly, actually if the losing party does not pay the court fees, the execution can be carried out by selling the object of the case. However, so far, confiscation has never been placed on certain items belonging to the defendant, so that the execution of payment court fees is difficult. If a confiscation must be placed for execution, of course the value of the goods confiscated for sale is not comparable to the value of the court fees. Thus, the delay in implementing the decision on the imposition of case fees is one of the obstacles to realizing the principle of speedy justice and low cost, as desired by all parties.

**Concept Reconstruction of Arrangements for Charging Case Fees**

Arrangements for charging court fees as stipulated in Article 181 paragraph (1) HIR jo. Article 192 R.Bg it is felt that it does not fulfill the sense of justice in society, especially for the losing party. However, it would be fairer if the costs of the case were borne by the plaintiff. If the plaintiff wins, then it is felt that it is sufficient to fulfill a sense of justice, because the plaintiff obtains civil rights over the object of the dispute whose value is far greater than the value of the court fee. Conversely, even if the plaintiff loses, it is only natural if he has to be burdened with court fees. Because argumentatively the plaintiff has disturbed the peace of the defendant in enjoying his civil rights, so that the obligation to pay court fees can be seen as a form of punishment against the plaintiff.

In this regard, it is necessary to reconstruct the regulation on the imposition of case fees on the losing party. The concept of reconstruction can be carried out by changing the imposition of court costs from the losing party to the plaintiff. Amendments to the provisions of this article should be made using legal products whose position is above or at least equivalent to HIR and RBg, which have so far regulated the imposition of court fees.

The problem is what legal product will be used, whether the law or other legal product besides the law. The HIR, which is still in effect today, actually has to be replaced with a civil procedural law for Indonesian products. Position of HIR and RBg equivalent to the law, therefore the provisions of Article 181 paragraph (1) HIR and Article 192 paragraph (1) RBg, should be amended by law. Thus, argumentatively, those who have the authority to embarrass changes in the imposition of case fees in the two articles, must be the legislature, namely the President together with the People's Representative Council (DPR) with the product of the law. However, if changes are made through a legislative mechanism, then a judicial review must first be conducted through the Constitutional Court, whether the content or content of Article 181 paragraph (1) HIR jo. Article 192 R.Bg, said is not in accordance with or contradicts the content principle of legislation, especially the principles of justice and humanity, as referred to in the Law on Formation of Legislation.
Practical experience in Indonesia, the elimination of the application of HIR and RBg., can be defeated by the "Supreme Court Circular Letter". It should be noted that the Supreme Court Circular Letter does not have a hierarchy of sources of law and order in Indonesia, both those listed in TAP MPR No.XX/MPR/1966 as well as in Article 7 paragraph (1) of Law Number 10 of 2004 as well as in Law Number 12 of 2011 Concerning the Formation of Legislation. For example, the abolition of forced bodies (gijzeling) in HIR and RBg. with a Supreme Court Circular.

The mechanism for amending a law through a judicial review by the Constitutional Court is quite relevant, because it can meet the requirements specified in the content material which must be regulated by law, particularly in Article 10 paragraph (1) point d, which in full is formulated: Content material which must be contained in the law:

1. further arrangements regarding the provisions of the 1945 Constitution of the Republic of Indonesia;
2. order of a law to be regulated by law;
3. ratification of certain international agreements;
4. follow-up on the decision of the Constitutional Court; and/or
5. fulfillment of legal needs in society.

If the changes to Article 181 paragraph (1) HIR jo. Article 192 paragraph (1) R.Bg, carried out with legislative procedures, of course, must pay attention to the provisions of Article 5 Law Number 12 year 2011 as amended by Law Number 15 of 2019 Concerning the Formation of Legislation, which determines: "In forming Legislation, it must be carried out based on the principle of Forming good Legislation, which includes:

1. Clarity of purpose;
2. appropriate institution or forming official;
3. compatibility between types, hierarchies, and payload materials;
4. Can be implemented;
5. usability and usability;
6. Clarity of formulation; and
7. Openess”.

Legislative legal products as instruments for changing HIR and RBg., of course, require a long time, because these changes are carried out according to predetermined procedures. Another alternative is the possibility that changes can be made by the Supreme Court through a Supreme Court Regulation, in fact it is sufficient to do so with a Supreme Court Circular Letter, I hope this is understandable. Because the Supreme Court has also made changes and even abolished the validity of articles in the law by using a Supreme Court Circular Letter.

In this case, it can be exemplified by the abolition of the provisions of Article 110 of the Indonesian Civil Code concerning the prohibition of wives from appearing in court to fight for their interests without the permission or assistance of their husbands. Complete provisions of Article 110 of the Civil Code. The definition is formulated as follows: "A wife may not appear in court without the help of her husband, even though she is married not with joint property, or with separate property, or even though she independently carries out independent work". The provisions in Article 110 the Civil Code, regarding the need for permission from a husband to his wife to take legal action is no longer valid since the existence of the Supreme Court Circular Letter Number 3 year 1963 concerning the Idea of Considering a Wetboek Burgerlijk Not a Law.

According to the Supreme Court Circular Letter, the Civil Code (Burgerlijk Wetboek) cannot be equated with the law. If the Wetboek is not a law, then HIR and RBg., of course, are
also not laws, so it is possible that changes can be made with a Supreme Court Regulation, even with a Supreme Court Circular Letter. Just a note, that the Wetbook comes from the word Wet which means law, and Book which means Book or Book, such as Wet van Straafrecht, which is translated into the Criminal Code, and Burgerlijke Wetbook, which is translated into the Book of Laws Civil law.

The concept of amendment can be carried out by canceling the provisions of Article 181 paragraph (1) HIR jo. Article 192 R.Bg. [7] by stating that Article 181 paragraph (1) HIR jo. Article 192 R.Bg., is no longer valid and establishes a new norm which essentially imposes a court fee on the Plaintiff. In addition, it also creates new legal norms which essentially regulate the execution of court decisions regarding the imposition of court fees. Conceptually changes to Article 181 paragraph (2) HIR, and Article 192 paragraph (1) RBg can be seen in the following illustration below.

**Article X**
1) Everyone who brings a case to the Court is obliged to pay the court fee.
2) The court fees as referred to in paragraph (1) shall be borne by the Plaintiff.

**Article Y**
1) In order to guarantee the payment of court fees by the losing Defendant, the Plaintiff is required to submit a security deposit of Defendant's property.
2) The confiscation of the Defendant's property as referred to in paragraph (1) is used as collateral for settlement court fees.
3) Payment of court fees as referred to in paragraph (2) is paid from the proceeds from the auction sale of the confiscated goods belonging to the Defendant.

**Article Z**
1) The remaining proceeds from the auction after deducting court fees must be returned to the defendant.
2) (1) The return of remaining auction proceeds as referred to in paragraph must be submitted to the defendant no later than 6 months after the auction is held.
3) The return of remaining auction proceeds as referred to in paragraph (2) shall be submitted to Defendant through the Court Registrar.
4) Submission of remaining auction proceeds as referred to in paragraph (3) was preceded by summons to Defendant 3 (three) times.
5) If after the summons referred to in paragraph (4) within a maximum period of 6 (six months), the Defendant does not collect remaining money from the auction, then the remaining auction proceeds become state money and are included in the state treasury.

**Conclusion**
Settlement of civil disputes through the courts imposes case costs on the losing party, but this principle is inconsistent with a sense of justice, especially for the losing party. Therefore, the principle of imposing court fees must be reconstructed, by stating Article 181 paragraph (1) HIR jo. Article 192 paragraph (1) R.Bg., is no longer valid and replaces it by transferring the burden of court costs to the Plaintiff. So that when the case is decided and the cost of the case is determined as contained in the verdict, the court will only return the remaining down payment that has not been used after deducting the total costs of the judicial process, and there is no need for execution of imposing case fees on the losing party.
References