

# Institutionalization of the Indonesian Civil Execution Law (TICEL)

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## ABSTRACT

The aim of this institutionalization for defining: (1) how to institutionalize (2) legal scope, (3) principles and (4) definition of The Indonesian Civil Execution Law (TICEL) as one of the jurisprudence. Institutionalization is based on normative legal research, through an inventory of materials obtained legal norms are then processed into TICEL. Legal materials processing include grouping, linking, comparing, explaining, concluding, harmonizing and synchronizing based on philosophy and legal doctrine. Based on the known processing, the scope of TICEL classified according to the object, the subject, by execution with or no determining steps, the results and procedures; the principles of TICEL, including TICEL as well as the public of law, the legal certainty, accountability, proportionality, the enforcement execution is the enforcement of the state authority, the judge's decision is not the only object of execution and neither the court as the subject of execution, the state receivables execution is different from the execution of non-receivable state, the legal contract may the basic of execution, the power executorial based on the state regulation, the execution is carried out if the debtors do not perform their obligations, without application no execution and execution may concern element of enforcement; TICEL is the rule of law concerning of forceful measures for realizing the rights and/or sanctions of civil law. It is recommended to related parties to optimize the use of TICEL, especially making TICEL as courses in the faculty of law and the main material preparation the Acts of TICEL.

**Key words:** institutionalization, execution, The Indonesian Civil Execution Law (TICEL)

## 1. Introduction

The private execution is the most important thing for the creditor or plaintiffs who win. About the importance of the execution of the decision of the judges, said Donald C. Clarke that: "When judgments are not executed, the law is not worth nothing

In the civil execution procedure is set to resolve the matter. According to a special procedure, the occurring case or legal dispute, the creditor directly drove the stage of realization, so completion of the matter without going through the stage of determination or without processed through ADR, arbitration, litigation or institution, which cost, time and effort is enormous. This means the creditor parties can save effort, time and cost. Thus a special procedure is very useful especially for creditors.

At the moment there is a vacuum of study with the subject matter of civil execution as one of the jurisprudence.

In addition, in some countries there have been laws governing the execution of the civil code as a whole and integrated in an act. The provisions of the civil execution law in these countries not only set about the execution of the decision of the judge.

As one of the jurisprudence, The Indonesian Civil Execution Law (TICEL) can be a useful contribution to the development of the jurisprudence. Practically, TICEL can be utilized as a guide for legislators to craft: article about execution right, clearly and comprehensively; creditors to choose the type of agreement that gives direct authority to act on the stage of the execution debtor in tort; for advocates, law enforcement and legal consultants to improve its performance.

Based on the background, in this paper discussed about how (1) to institutionalize, (2) scope, (3) principles of law and (4) the definition of TICEL.

## 2. Methods

Institutionalization of HEPI is based on normative legal research, conducted through an inventory to get the material law. Legal materials inventoried include primary law, secondary and tertiary that exist in conventional libraries and virtual research, with a study of the collecting documents.

Research on the TICEL is original research, because until now it has never done research or writing a thorough and integrated Execution of the law, especially the Indonesian Civil Execution Law.

There was a dissertation on the execution in the Airlangga University Surabaya from Herowati Poesoko with the title "Parate Execution Dependent Rights Object.

Based on a search in cyberspace are known the existence of some writings about the execution of the private execution. These writings are generally discuss one of the topics of civil execution, not a discussion of the comprehensive, systematic and integrated.

### **3. Discussion**

#### **3.1 How To Institutionalization The Indonesian Civil Execution Law (TICEL)**

The term comes from the institutionalization of the institution. The matching words in the language of the institutions of the United Kingdom is the institution. In the language of the Netherlands, used the word *instituut*. Thus the sentence: " Institutionalization The Indonesian Civil Execution Law " contains the meaning of the act instituting the norm about forced effort or the effort of rights and sanctions in civil law Indonesia into a legal institution under the name of TICEL.

The activities of the institutionalization of TICEL are based on philosophical and legal doctrine, as well as done through a two-stage activities (collecting and processing materials law of TICEL).

##### **3.1.1 The philosophical foundation in the institutionalization TICEL**

Any evidence of a knowledge of the specific characteristics of "what" (ontology), "how" (epistemology), and "what for" (axiology) the knowledge compiled (Jujun S. Suriasumantri, 1998: 105).

As one of the jurisprudence, it is in the process of institutionalization TICEL is based on the philosophical grounding should be, namely, ontological, epistemological and axiological.

The ontology of science covers the substance of what science is, which can not be separated from the philosophy of perception about "what" and how (the) "There" was (being *Sein, het zijn*) (Koento Wibisono Siswomihardjo, 2002: 12).

Based on the opinion of Jujun S Suriasumantri, in epistemological institutionalization TICEL has to go through the scientific method. The process of institutionalization of TICEL is done through two stages. The first stage of institutionalization of gathering materials TICEL, were based on research methods. The second stage of institutionalization of TICEL processing TICEL is done with based on the requirements of the knowledge.

The science of axiology, covers the values (values) that are normative in the awarding of the meaning of the truth or reality as we encounter in our lives that explore a wide range of areas, such as the social area, the area of symbolic or physical-material. More than that, it also values demonstrated by the axiology as *a conditio sine qua non* requisite followed in our activities, both in research and in applying science (Hayyan ul Haq, 2014: 13). Firmer again, grounding skepticism axiology with regard to why or to what a science. Associated with the institutionalization of TICEL, then in the base axiology skepticism visible benefits of TICEL.

##### **3.1.2. Theoretical foundation in the institutionalization TICEL**

###### **3.1.2.1. The Foundation theory in inventory of the material TICEL**

Legal materials inventory activities to be processed into TICEL is based on specific legal doctrine. Based on a legal doctrine that is used, it can be determined the type and scope of the norms that are selected to be collected as material that is then processed into TICEL.

Theory of law relied upon to determine the criteria of identification is the normative legal science (*jurisprudence*). According to Meuwissen, the term Dogmatic Law (in Germany: "*Rechtsdogmatik*", "*Jurisprudenz*") covers all scientific activity directed to study the contents of a concrete positive law order (B. Arief Sidharta. 2007: 54).

The purpose of the research inventory here is getting the legal materials in the form of a set of norms about TICEL, TICEL is becoming to be processed.

In accordance with the opinion of dogmatic jurisprudence Meuwissen above, then collected is norm TICEL in positive law, both in the written regulations, as well as the living and applies in practice, which by Soetandyo Wignjosoebroto (2002: 147) referred to as doctrinal legal research and non doctrinal legal research."

###### **3.1.2.2 The Foundation theory in processing TICEL**

An opinion about terms as science advanced by The Liang Gie (1987: 33) that for fulfilling the requirements of science, should meet the empirical characteristics, systematic, objective, analytical and verification.

###### **1. Empirical characteristics of TICEL**

Thus the jurisprudence (including TICEL) empirical in nature, which looks at the real load in terms of TICEL rules about understanding, procedures, requirements and the ins and outs of civil execution in Indonesia. The provisions of the TICEL is the norm, which provided the foundation and guidelines for conducting studies and implementing civil execution in Indonesia.

###### **2. Systematic characteristics of TICEL**

Institutionalization TICEL is done by using a systems approach. Through a systems approach, then first, the characteristics of the TICEL can be described and analyzed in each of its components. Second, through a systems approach always consider factored relatedness TICEL internally and externally. Third, this approach is more representative for the ontology, epistemology, and axiology of science, according to the characteristics of the essence of the TICEL.

### **3. Objective characteristics of TICEL**

The term institutionalization TICEL means objectively norms TICEL who inventoried as a law then processed and compiled TICEL is, without being influenced by opinion or personal views.

### **4. Analytical characteristics of TICEL**

Preparation of TICEL also carried out analytically. TICEL writing done by outlining the TICEL as objects of study into parts that each piece as though discontinuous into sub sections, and each sub-division divided into sub-subsection is more narrow, and so on until a clear explication about the TICEL.

### **5. Can be verified characteristics of TICEL**

According to Jujun S Suriasumantri (1998: 131), the science is a set of knowledge that the truth has been tested empirically. In this case it must be realized that the proof in science is not absolute in nature.

Based on this, then as a science, TICEL (results of institutionalization) also must be verifiable, in the sense of open to truth by the reviewers examined next. When in the review activities found truth TICEL as one of the jurisprudence, then the positions of TICEL as one of the jurisprudence is becoming more powerful.

#### **3.1.3 Two stages in the institutionalization TICEL**

##### **3.1.3.1 First stage of collecting materials TICEL**

Collection of legal materials made through research, i.e. inventory. An inventory of research done to collect norms TICEL. Activities conducted within the research inventory includes the determination of criteria for the identification of the norm, the norm, the norm of the collection followed by organizing the norm. The purpose of the research inventory is getting a set of norms about TICEL, who serve as legal materials to be processed into TICEL.

##### **3.1.3.2 Second stage processing activities legal materials**

Legal materials TICEL obtained through inventory in the next norm is analyzed by means of grouped, connected, compared, given meaning (explained, outlined) and or inferred, proceed with the synchronization and harmonization which is based on the philosophy and legal doctrine.

#### **1. Grouping of the TICEL materials**

Materials inventory results from TICEL, grouped according to certain criteria. The result could be a grouping of groups, which are further subdivided into sub groups and so on, in accordance with the criteria of the underlying disease.

Grouping procedures using inductive logic thinking, starting with the observation of each grain of material law heading a group of legal materials, grains or from special things heading in the common. Through this grouping of civil execution material rendering can be done analytically. The analytical nature is one of the terms to be called science (The Liang Gie. 1987: 34).

#### **2. Linking of the TICEL materials**

Activities linking materials TICEL aims obtain correlation and consistency, so the presentation of TICEL can be implemented systematically.

Correlation is used to pre-screen any material grain TICEL. Details of the materials that there is a correlation with TICEL attempts forcibly to the effort to civil penalties or rights and Indonesia used to compile the TICEL, whereas no correlation or far ruled out.

Consistency is one of the requisite scientific papers. A scientific paper that consistency is maintained and guaranteed certainty of terms with the understanding that followed it, it becomes easy to understand and be understood. In the field of philosophy, a statement is considered true if the statement is coherent or consistent with previous statements that are considered true (Jujun S. Suriasumantri, 1998: 55). With respect to the nature of this, then be in the institutionalization of TICEL also performed consistently, thus avoidable dispute, assertion or not harmonious out of sync with each other. On the other hand, the nature of this consistently being one of the conditions for the realization of a systematic TICEL.

Arrangement science systematically this is what distinguishes science with knowledge. The philosophers and scientists agree that science is mainly in the form of a collection of knowledge in systematic. Systematic characteristics means that the information and data that is arranged as a collection of knowledge that evidence of relations of dependence that regular (one of which was drawn up on a consistent basis) (The Liang Gie. 1987: 33).

Based on the linking of the ordinance, then the procedure of grouping based on the inductive logic thinking.

#### **3. Comparing of the TICEL materials**

Grain materials TICEL compared with each other. Through comparing the obtained similarities and differences, which are expected to be unearthed understanding and a deep understanding of and more sharply about the TICEL.

In other words, through comparing the objective characteristics of TICEL is manifest. The feature of objective science is free from personal bias (The Liang Gie. 1987: 33). In accordance with the opinion of The Liang Gie characterized the objective of TICEL means TICEL was free from personal bias and free from personal favorites. TICEL is merely contain the revelation and the data describing openly or reflect precisely the

symptoms studied.

Based on the way these procedures compare based on inductive logic thinking.

#### **4 Explain of the TICEL materials**

Activities explains the form of the granting of the sense of being undertaken by way of explaining or expounding the details of materials TICEL. Through this explanation about what and how the TICEL is understandable and understood easily.

Ease in understanding TICEL can push he did verify against the TICEL. Verification is one of the conditions of a science known as knowledge (The Liang Gie. 1987: 34).

Legal materials processing activities explaining here using deductive logic thinking. Something "that explained or elaborated" is impersonal, while "that describes or elaborates" be more specific or more detailed.

#### **5. Conclude of the TICEL materials**

The purpose of the withdrawal of the conclusion of an opinion, provisions or specific legal materials grain is assertiveness over the case concluded, or for linking or comparing in order to analyze the results of the research. In addition, activities concluded also required to obtain summary, good summary about the overall substance of the TICEL or withdrawal of the principles contained therein.

Besides activities concluded also become the means to find the understanding or definition, formulation, or even theory. Discovery principles in the TICEL related to ontology in philosophy.

Activities conclude are looking for things that are common things that are special, thus is an activity that uses inductive logic thinking.

#### **6. Synchronization of the TICEL materials**

According to the great Indonesian Language Dictionary, the term "synchronization" is a noun that means synchronizing (Departemen Pendidikan dan Kebudayaan: 946). Synchronization is done so that in the TICEL is not found the argument between one of the provisions with other provisions, between one process with other processes, or between one institutions with the other institutions.

Seen from the procedure, synchronization using inductive logic thinking, i.e. starting from the discovery of the argument some grain conditions continued with the efforts of invalidated. The first step in the form of gathering the whole grain regulations the mutual fell into perversion. The second step is to find the purpose he had made throughout the regulations that each other fell into perversion. The third step is to analyze each grain of regulations mutually fell into perversion to find where is the grain regulations which can achieve the goal of establishing regulations. Grain regulations no or less support the goal of establishing the regulation invalidated or ruled out the introduction.

#### **7. Harmonization of the TICEL materials**

The state of harmony occurs in a few things of mutually being in tune. Thus, as is the case with the synchronization, then the procedure harmonization is also based on inductive logic thinking.

Through the synchronization and harmonization, TICEL results institutionalization can be served whole, comprehensively, interrelation each other in a system, it becomes more easily learned and understood, so that it can be beneficial to the development of optimal legal science as well as for the progress of society.

### **3.2 Scope of The Indonesian Civil Execution Law**

#### **3.2.1 Execution according to the object**

According to the civil code, execution of its own Indonesia can be grouped into two major groups, namely the civil execution Indonesia non receivables and receivables of the State.

The term receivables is here defined as the bills winning plaintiffs or creditors against the debtor or defendant who loses. The bill covers the achievements as well as sanctions. According to Article 1234 of The Civil Code, achievements consist of obligation to give something, do something, and it does nothing. Sanctions here are intended as negative sanctions, i.e. the punishment that can be imposed by the creditor or plaintiff who prevailed against the debtor or defendant who loses, which is sourced in the agreement, the decision of the judge and or law provisions.

##### **3.2.1.1 Execution of non receivables of the State, include:**

1. Executions against something that interferes with the rights of a tree trunk or roots are above or the entrance into the land of a neighbor;
2. Execution of the decision of the judge whose contents are punishing.
3. Execution of the arbitration decision include national arbitration decision executable and execute the decision of the international arbitration (Article 59 to Article 69 of Act No. 30 of 1999 on Arbitration and ADR).
4. The execution of the decision of the ADR that should be implemented in good faith, so implemented voluntarily without coercion/execution (article 6 (2) of Act No. 30 of 1999 on Arbitration and ADR)
5. Execution of executory copy of deed of debt, which according to Article 1 point 11 and. Article 55 (2) of Act No. 30 of 2004 on the Office of Notary, an executory copy of deed of debt recognition that is made before a notary with the head "DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA" can be executed according to Article 224 HIR /Article 258 RBg.

6. Pawn guarantee execution according to The Civil Code regulated in Article 1155 to Article 1156 of The Civil Code.

7. Pawn guarantee execution on Pawnshop founded in 1905 based on *Pandhuisreglement* (Pawnshop Act) which changed several times, the last by Regulation of the Government No. 51 of 2011 on Limited Liability Company (Persero).

8. The execution of the mortgage guarantee provisions, which ships about their execution is a provision that existed before the enactment of Act No. 17 of 2008 on Cruise, namely through Article 224 HIR/ Article 258 RBg or Article 1178 (2) of The Civil Code

9. Mortgage guarantee execution of aircraft and helicopters, are regulated in Act No. 1 of 2009 on flight. In the Act is not set explicitly the type of Treaty guarantees according to Mariam Darus Badruzaman, the agreement guarantees that the material can be used for objects in aircraft and helicopters is the mortgage (Mariam Darus Badruzaman, 1983: 83-123).

Execution of aircraft and helicopters there are two kinds, i.e. execution of administration and civil execution. Administration execution in the form of the removal of the sign the registration and nationality of aircraft and helicopters are concerned. Civil execution carried out by way of a change object guarantees into some money so easily accounted for repayment obligations.

10. The execution of the guarantee entitlement dependent, Act No. 4 of 1996 on The Mortgage Rights in execution enforce provisions of Article 224 HIR/ Article 254 RBg

11. Fiduciary guarantee execution as set forth in Act No. 42 of 1999 on Fiduciary.

12. Warehouse receipt warranty execution Act No. 9 of 2006 on Warehouse Receipt Systems.

13. The execution of sanctions in the form of subscription agreement, subscription termination if customer does not pay its obligations.

The execution of commerce court decisions in the case of the commercial bankruptcy and debt payment delays, as well as intellectual property litigation, according to Act No. 37 of 2004 on Bankruptcy and The Postponement of The Obligation To Pay A Debt, Act No. 31 of 2000 on Industrial Design, Act No. 32 of Th 2000 on Design and Layout of Integrated Circuits, Act No. 15 of 2001 on The Brand, Act No. 19 of 2002 on Copyright, Act No. 5 of 1999 on Business Competition and Antitrust Prohibition is Not Healthy.

### 3.2.1.2 Execution of the receivable state

1. The execution of the receivable state non Bank Indonesia Liquidity Assistance (*Bantuan Likuiditas Bank Indonesia*, BLBI)

Object execution receivable state non BLBI there are 2 (two) types, namely the joint statement and the determination of the amount of receivables of the State.

2. The Execution of the receivable state BLBI

Object execution receivable state BLBI is a right that belongs to the Bank Indonesia transferred to The Indonesian Bank Restructuring Agency (*Badan Penyehatan Perbankan Nasional*, BPPN).

The right Indonesian Bank Liquidity Assistance charged includes assets in restructuring, restructuring and liability or property or into the right bank in the restructuring and or BPPN.

### 3.2.2 Execution by subject

The execution was the subject of a party according to law authorities forced to attempt the effort to implement the rights and or sanctions.

By subject, the execution consists of:

1. Execution by the victim. The owner of the yard as victims can directly cut off a tree trunks is on above and/ or the root entry in the his yard (Article 666 of The Civil Code).

2. Execution by the District Court. The District Court is authorized to run the execution of the decision of the District Court, decision of the Court of Commerce, the arbitration decision, the decision body of consumer dispute resolution, and a decision of Business Competition Supervisory Commission.

3. Execution by the religious courts. The Religious Court authorities carry out the executions over the Religion Court decision.

4. Execution by the Service Office a Wealth of State and Auction (*Kantor Pelayanan Kekayaan Negara dan Lelang*, KPKNL). So tort, then the debtor's auction of State officials through direct selling KPKNL object auction guarantees. This is called direct execution.

5. Execution by creditors. Authorize the creditor carrying out the execution creditors pawn holders on pawn shops (Article 17 Act Pawnshops S 1928: 81), creditors pawn holders under Article 1155 and article 1156 of The Civil Code, creditors are holders of a fiduciary article 31 of Act No. 42 of Th 1999 on Fiduciary, creditors of the warehouse receipt holder Article 16 of Act No. 9 of 2006 on Warehouse Receipt Systems, creditor banks are holders of deposits as collateral through the exercise of the power of dilute the deposits.

6. Sales execution under the hand by the giver and receiver pawn guarantee (Article 1155 of The Civil Code), The execution of the guarantee entitlement dependent article 20 (2) of Act No. 4 of 1996 on The Mortgage Rights, and fiduciary rights of article 29 (1) c of Act No. 42 of 1999 on Fiduciary.

7. The curator as a subject of execution. In the decision of the bankruptcy, commercial court judges appoint judges and bankruptcy trustees curator. Curator under the supervision of a supervisory judge conducting the management of property in bankruptcy. (Article 15 to Article 16 of Act No. 37 of 2004 on Bankruptcy and The Postponement of The Obligation To Pay A Debt).

8. Customs and Excise Officials as the subject of the execution. Customs and excise officials in brand and copyright on export or import goods, be subject to a temporary suspension in the execution, and in the decision of the Court of Commerce (Law No. 17 of 2006 change of Act No. 10 of 1995 on Customs).

9. The Committee for the Affairs of the State and Accounts Receivable (*Panitia Urusan Piutang Negara*, PUPN) and KPKNL as the subject of the execution. Chairman of PUPN assumed by the head of the Regional Office of KPKNL. PUPN management do the receivable state that handed him (PMK No.: 122/PMK. 06/2007 on Membership and Governance Work, as modified with the PMK No. 155/PMK. 06/2009 on Changes over the PMK No.: 122/PMK. 06/2007 on Membership and Governance work and Act No. 49 Prp 1960 on The Committee for the Affairs of the State and Accounts Receivable).

10. BPPN as the subject of the execution. According to Presidential Decree No. No. 27 Establishment of BPPN, BPPN about formed to deal with the country's debt comes from the BLBI. BLBI was authorized for that very extensive (PP No. 17 of 1999 on BPPN with four times the changes)

### **3.2.3 Execution based on Phase Determination**

Civil litigation settlement process through three stages, namely the stage of preliminary, determination phase, and the phase of realization. Preliminary stage include the relationship of law and legal disputes. Phase determination include the process of litigating in court (litigation), ADR, arbitration, or institution. Stages of realization in the form of realization of voluntarily or forcibly (execution).

#### **1. Execution through phase determination**

In General a matter (a legal dispute) resolved through the stage of determining whether through litigation, ADR, arbitration or an authorized agency determination is the assurance of the rights and obligations of the Parties subsequently realised either voluntarily or by coercion (execution).

#### **2. Execution without phase determination**

In addition to the usual procedures through (via a phase determination) to legal disputes can also be resolved through a special procedure (without phase determination, or so the direct realization of the legal dispute going on).

Special execution sourced on regulations (Article 666 of The Civil Code), regulation with certain requirements (executory copy of deed of debt, article 224 HIR /Article 258 RBg), as well as the existence of the guarantee (pledge, pledge on pawnshops, fiduciary, mortgage rights, mortgage, warehouse receipt, deposit as security) and subscriptions agreements.

### **3.2.4 Execution based on the results**

#### **1. Direct realization of execution**

In general the matter resolved through direct realization. Through the implementation of an execution creditor, the right of the plaintiff realised or sanctions are enforced.

#### **2. Indirect realization of execution**

In certain things, the handling of the matter carried out through the realization of indirectly. Through the efforts of force, appeared to urge the debtor defendants for immediate effort to its obligations.

Execution of penalty sanctions in the form of indirect pay money forcibly, forcibly Agency in accounts receivable accounts receivable or non State of the country, the prevention of travel abroad, guarantee and object blocking or other treasures, termination of the subscription and the lifting of the "threat" of criminal process

### **3.2.5 Execution according to the procedure, are divided into:**

1. The procedure of execution of non state accounts receivable, consisted of the usual execution (paying a sum of money) that preceded or without guarantee seizure, execution through registration of the award applies to national and international arbitration decision. Then the real execution, do certain deeds execution, execution with the help of judges, direct execution, sales under the hand, sales at the place of the usual goods tradable, execution based on the determination of the judge, deposits as collateral, the forced termination of a subscription agency, forced money, and the "threat" of criminal process.

#### **2. Procedure execution state accounts receivable**

a. Procedure execution state accounts receivable non BLBI, consisting of the execution of the auction sale by creditor and execution by the PUPN. Execution by PUPN through the warning procedures, billing at once with the forced auction, auction sales or without auction sales object of execution seizure. In taking care of accounts receivable state, PUPN is authorized to do maintenance, administering, securing and utilization of object execution.

b. Procedure execution State accounts receivable BLBI done by transfer of Rights charged BLBI to BPPN, Bank banking program, or a transfer of assets and liabilities in restructuring.

c.

### **3.3 The Legal Principles Contained in The Indonesian Civil Execution Law**

1. **The principle of TICEL is within the scope of public law**, because:

- a. TICEL is part of Execution Law, and execution are in the realm of public law;
- b. seen from the nature of the conditions, TICEL coercive. The parties are not free to craft a treaty as the source of the execution. In the absence of regulations that support, then the covenant as a source of execution unauthorized;
- c. legal norms which provided the legal materials derived from TICEL provisions of civil law. Legal materials are then processed and presented with characteristics and meet the terms of the legal doctrine and philosophical grounding, and given the name of TICEL. Processed this is what goes into the realm of public law.
- d. Execution involves many officials, whether judicial or executive.
- e. third party retain the rights of execution (e.g. the winner of auction) should be protected. Protection of third parties is a manifestation of the protection of the public interest. Thus TICEL provisions in the category of public law.

2. **The principle of legal certainty**

The principle of legal certainty requires that TICEL is based on the provisions of the law. The agreement any time without supported the rule of law, not quite become the basis of the execution.

3. **The principle of openness**

In TICEL, principles of openness means: "the principle of the opening up to the community, particularly the execution creditor and the debtor are executed to get the correct information, honest and impartial in the execution by remaining attentive to the protection of the rights and obligations."

4. **The principle of Accountability**

In TICEL, the principle of accountability means any execution along with the final results of the execution by the subject of execution should be accountable to the community particularly the execution creditor and the debtor are executed in accordance with the provisions of the applicable legislation.

5. **The principle of proportionality**

The principle of proportionality in the TICEL is defined as the principle that prioritizes a balance of rights and obligations of the execution creditor with the debtor are executed.

The embodiment of the principle of proportionality in the execution, among others, looks at the process of foreclosure. According to Article 197 HIR execution seizure should be done on wealth are executed in the form of moving objects. If the estimated value is already sufficient to pay the all of obligations are executed, then the execution should be stopped, Velasquez instead if not sufficient then continued on foreclosure on wealth are executed in the form of a fixed object.

6. **The principle of execution is the enforcement authority of the state**

With respect to the implementation of the execution which involves the implementation of enforcement efforts is the official authority of the state, then in a state execution however must be implemented. Barriers against execution is obstructing enforcement action that the authority of the state, then it should be dealt with. Those who disrupt the execution was sentenced under Article 212-Article 216 Criminal Code.

7. **The principle of the judge's decision is not the only object of execution**

In addition to the court decision, the execution was also carried out against something that bothers, executory copy of deed of debt, object of property collateral, bankruptcy, the arbitration decision, the decision of the dispute settlement body of the consumers, the joint statement made by PUPN with the insurer's debt underwriters, the determination of the amount of state accounts receivable by PUPN, assets restructuring, restructuring and liability or property or into the right bank and bank or BPPN.

8. **The principle of courts are not the only subject of execution**

In addition to the District Court, the subject of another execution, the victims of religious courts, creditors, the state auction office, curator under the supervision of a supervisory judge, officials of the Customs and Excise, PUPN and KPKNL, as well as the BPPN.

In addition to the implemented by the courts, in civil matters there are court decision that do not require the execution of a decision, namely, the contents of his decision are declare or constitutive.

9. **The principle of the state receivables execution is different from the execution of non-receivable state**

The execution of state receivable not be "rushed" by the execution of the non state debt. Accounts receivable non BLBI execution carried out by PUPN, whereas the BLBI by BPPN. This contrasts with the execution of non debt the State made through the courts or through direct auction by KPKNL.

10. **The principle of the legal contract may the basic of execution**

Several agreements are used as a legal basis for the execution of the agreements is constructed in such a way, so that the overall implementation or joint of each agreements in fact is execution.

The Covenants are constructed so that it has the authority of execution, include:

- a. Agreement debt-receivable;

- b. *Cessie* (submission of accounts receivable) guarantee or pledge of receivables for receivables;
- c. The authority, which includes:
  - 1) authority to overload the account debtor with interest, a fine excess drag, interest arrears, and all expenses incurred due to the implementation of the treaty and;
  - 2) authority setting the amount of the debt the debtor (client);
  - 3) power to take payment of receivables from deposits that are pledged, along with the power to perform acts of implementation

Furthermore it needs to be emphasized about the basis of TICEL is in the field of public law, which prohibits the use of the contract may the basis of the execution. This principle is not opposed to the use of the contract may the basis of the execution of banking practice, because:

- a. agreements granting such powers respectively not forced attempts;
- b. Agreement *cessie* or pawn as legal basis for the granting of the right material for banking is regulated in Article 613 of the Civil Code and Article 1150-Article 1161 of the Civil Code;
- c. Object implementation of power is money and money is the object that is the value of a specific or definite, so it can be easily calculated. This contrasts with other guarantees in the form of object value is relative so that the potential to cause problems in the calculation of its value for debt repayment.

#### **11. The principle of the power executorial based on the state regulation**

The sentence that reads "DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA" who becomes head of the decision of the judge or the head of a deed, is not a title execution.

A decision of a judge or the deed containing the head so it can be executed because there are basic rules that the decision or the deed may be executed. On the contrary decision of the judge who headed the case need not be executed if the contents of his decision are declare or constitutive. Furthermore the absence of the head of such a deed, the execution can be run against the debtor that tort, if any provision of the act that determine such, for example Article 1155 and Article 1156 of the Civil Code. Another example is execution according to section 666 of the Civil Code.

#### **12. The principle of without application no execution**

This principle applies in the field of civil law, in particular the executions carried out by the District Court or the Court of religion, KPKNL, customs and Excise officers. The effort is an effort of the civil code execution rights, well sourced right on court decisions, treaties, and legislation or regulations. In the field of the civil code, if a rights will be realised or not depends entirely on the holder of the rights. A plaintiff wins reserves the right to determine whether his victory realised or not. It is related to the principle of judges should be follow the opinion of the parties. In an auction, auction officials also banned initiative carry out auctions of execution when there are no solicitations.

#### **13. The principle of the execution is carried out because the debtors do not perform their obligations**

This principle is useful to protect the debtor in good faith. In the event the debtor defendants wished to implement its obligations voluntarily, yet ignored by creditors of plaintiff and plaintiff's creditors still carry out executions, the execution then annulled by law.

The principle does not apply to state accounts receivable executions. This is because the owners of the state accounts receivable was a state, not an individual. In connection with that, then in the management of the accounts receivable non BLBI held provisions, in a state where it is feared the country would be harmed, PUPN can act without waiting for the submission of accounts receivable of the state (Article 4 of Act No. 49 Prp 1960 on PUPN).

#### **14. The principle of execution contains elements of coercion or violence**

Coercion / violence is what distinguishes the execution of the fulfillment voluntarily. Coercion / violence in the execution of essentially can serves to uphold the authority of the state. Coercion or violence it must be done in accordance with the provisions of applicable law.

Coercion or violence is carried out not in accordance with the provisions of applicable law is not execution, but tort, or even in certain cases can be classified as a criminal offense.

### **3.4 Definition of The Indonesian Civil Execution Law**

TICEL is a legal provision which contains the norms of forceful measures to realize the rights of the creditor / plaintiff who wins because the debtor / defendant who lost would not voluntarily meet their obligations, or norms of forceful measures to realize the sanctions in accordance with applicable regulations.

Or so in short it says that: "TICEL is the law that contains provisions on the forced efforts to realize the rights and / or sanctions "

Understanding the new view TICEL that changed the view of execution that existed for this, where execution is viewed as an implementation of the decision of the Court (M. Yahya Harahap, 1988: 1; Retnowulan Sutantio dan Iskandar Oeripkartawinata 1989: 122; Sudikno Mertokusumo, 2010: 201; Subekti, 1989: 128; Supomo, 1972: 137; Wirjono Prodjodikoro, 1975: 132). This new outlook comes as an executable object not only the decision of the court.



#### 4. Conclusions

4.1 Scope of the TICEL is none other than the norm of civil execution Indonesia, which is in the conversation is based on the object, subject, stage determination, results and procedures.

4.2 The legal principles contained in the TICEL are:

1. The TICEL is within the scope of public law;
2. Legal certainty;
3. Openness;
4. Accountability;
5. Proportionality;
6. Execution is the enforcement authority of the state;
7. The object of the execution is not the court decision only;
8. The subject of execution is not the courts only;
9. Execution state receivables different with execution non state receivables;
10. The legal contract may the basic of execution;
11. The strength execution on rules;
12. Without application no execution;
13. The execution is carried out because the debtors do not perform their obligations
14. Execution contain elements of coercion or violence;

4.3 Definition of The Indonesian Civil Execution Law (TICEL):

TICEL is a legal provision that contains norms regarding forced efforts to realize the rights of the creditor plaintiff who wins if the debtor losing the defendants don't want to voluntarily meet their obligations, or norm about forced attempts to effect of sanctions in accordance with the regulations.

In short, it can be said that: " The Indonesian Civil Execution Law (TICEL) is the law that contains provisions on the forced efforts to realize the rights and / or sanctions "

#### 5. Suggestions

TICEL is a new area of law governing attempts forcibly to the effort to civil penalties or rights and Indonesia. The rights that arise from the regulations, agreement or court decision is of no use if it can not be realised. Thus the TICEL called (most) important compared to all other areas of law. To optimize the function of TICEL, then it is recommended to:

1. Legislators, to draw up Acts of TICEL and make the TICEL as the main material preparation the Acts of TICEL
2. Prospective creditors, to choose the type of agreement incorporate a clause giving authority to the creditor to directly tackle the stage of execution , if the debtor does not voluntarily pay off debts.
3. Colleges in particular the faculty of law, making TICEL as courses in the faculty of law.
4. Scientists, in addition to developing the execution law are also developing the civil execution law, the criminal execution law, the constitutional execution law, the administrative execution law and the labor execution law

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