

Collateral Seizure (*Sita Jaminan*) and Execution Seizure (*Sita Eksekusi*) in Indonesian Civil Court

The civil legal system in Indonesia consists of 4 (four) different levels i.e. the first instance level at the District Court, the appeal level through the High Court, the cassation and the Judicial Review levels through the Supreme Court. In addition to the lengthy judicial process, executing courts verdict is also a long and complicated process.

A Seizure is an act of taking over the rights of a person/certain party to certain goods by a court or based on a court order. In some cases, the party who has won the case does not receive payment or compensation stipulated in a court verdict. Some of the practical obstacles that often occur are the lack of good faith of the losing party to conduct the court order such as paying the material loss, the difficulty in proving ownership of the losing party's assets for execution, either movable or immovable assets or to reach the location of the debtor's assets to be executed.

Collateral Seizure (*Sita Jaminan*)

The legal basis of Execution Seizure (*Beslag Conversatoir*) is stipulated under Article 227 of *Herzien Inlandsch Reglement* or Indonesian Civil Procedural Law ("HIR") that basically provides the court can issue orders, based on requests from one of the disputing parties, to seize goods/assets because suspected of being embezzled or taken away before a court verdict is rendered and to ensure the verdict can be implemented.

The applicant for Collateral Seizure is a creditor (Plaintiff) who has receivables or rights to collect against the debtor (Defendant). The creditor has rights guaranteed by law under the provisions of Article 1131 Indonesian Civil Code, which basically states that the debtor's assets will serve as collateral for any engagements made by the debtor. Collateral Seizure can even be applied to objects that have been guaranteed under the Security Rights (*Hak Tanggungan*) and prioritized to other parties.

There are several criteria for objects that can be requested for Collateral Seizure, among others: i) Unpaid Debts Cases that are not guaranteed by certain collateral; ii) Compensation Cases arising from acts of default or breach of contract as referred to in Articles 1243 to 1247 of Indonesian Civil Code or a tort as referred to in Article 1365 of Indonesian Civil Code; iii) Disputes over property rights over immovable objects; and iv) Against goods that have been previously placed as collateral.

LEGAL ARTICLE



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In general, a Collateral Seizure application shall be included in the final section of a lawsuit or before the Claim (*Petitum*) section, where the Collateral Seizure must clearly state the name of the object, location or ownership of such object. In addition, the applicant for the Seizure application must also be able to prove that the confiscated object belongs to the debtor by showing proof of ownership to be verified by the Panel of Judges.

Execution Seizure (*Sita Eksekusi*)

One type of execution in civil law mentioned in Article 225 paragraph (1) and paragraph (2) of HIR is execution for committing certain acts. If the intended execution is to carry out an act, for example paying a sum of money, then the winning party can ask the losing party for the money as regulated under Articles 196 and 197 HIR.

Before submitting an execution application, the winning party shall submit a request letter to the district court to send a warning (*aanmaning*) against the losing party to summon the losing party to appear before the head of the district court and to ask the losing party to obey the court verdict. Such warning letter will be delivered to the losing party 1 (one) time by the court bailiff. However, if after the *aanmaning* is issued and the losing party has not still fulfilled its obligation, then the winning party can submit an Execution Seizure of the property belonging to the losing party to be auctioned, so that the results of the auction can pay for the losses suffered by the winning party based on the court verdict.

There are 2 (two) types of Execution Seizure i.e. Direct and Indirect Execution Seizure. Direct Execution Seizure is requested by the execution applicant or the winning party once the losing party does not obey the court verdict. Follow-up or second execution may be done if the result of the first direct execution does not satisfy the court verdict. Meanwhile, an Indirect Execution Seizure is originating from a Collateral Seizure that has been declared valid and valuable and shall automatically turn into an execution seizure.

Execution Seizure can only be carried out if the decision has permanent legal force and has been carried out by warning (*aanmaning*) beforehand. On the determination of the Execution Seizure, a legal action can be done to resist by filing an opposition lawsuit because such Execution Seizure causes loss to the rights or interests of other parties. Execution Seizure is normally carried out on land, buildings, vehicles, jewelries, but can also be carried out on bank accounts, deposits, bonds or other securities that can be auctioned and valued in money.

Applicant for Collateral Seizure must be able to provide valid evidence of ownership of the confiscated object during the hearing for the panel of judges' consideration, while the complexity of Execution Seizure is often found in practice and to solve the issues shall also depends on the good faith of the debtor and coordination with the court bailiff.

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