

# The Political Reconstruction of Legal Completion Decision Execution Through Strengthening of Supervision Functions Strategy in a Supreme Court

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**Abstract**—The Supreme Court sits at the top of all courts and as the highest court of the four judicial spheres. This position gives functions and authorities to the Supreme Court as the leader of all courts in four environments. The function is emphasized the oversight function which is clarified regarding the objectives, objects, and authorities. The purpose of supervision is the implementation of justice carried out carefully and appropriately. The method of the research was the juridical normative and the statutory regulation approach. The purpose of the research want to get an answer about the urgency of the legal political reconstruction and how are the model of the legal political reconstruction settling the execution of the civil decision. The result was indicated that the completion of the execution of civil decisions could be through the idea or concept of strengthening the supervisory function in the Supreme Court. This concept or idea was intended as a means to encourage the political direction of policies and regulations. So that, the duties of the Oversight Body in the Supreme Court was optimal, especially towards the duties and functions of the judiciary in completing the execution of civil decisions. Political reconstruction of law was directed at arguing in substance the law, legal structure and legal culture and infrastructure both in terms of quality, quantity and budget. Therefore, political support was needed in order to settle of the execution of civil decisions. Every person has the right in equality to be fully heard in public and fairly by an independent and impartial tribunal carried out according to the Universal Declaration of Human Rights, stated in Article 10.

**Keywords:** *reconstruction, political law, execution of civil decisions, oversight function*

## I. INTRODUCTION

A Supreme Court which is the leader of all courts consists of four judicial environments with duties and functions determined in a constitution neither in Article 24 paragraph (2) of 1945 Constitution of Republic Indonesia nor Article 32 of Law Number 3 of 2009. It is concerning to the second Amendments of Law Number 14 of 1985. It is also about the Supreme Court law maintain and justice for justice seekers. So, the supervision is needed to run out of judiciary specifically in the district court as a general justice institution under a

Supreme Court. Supervision is carried out by respecting the independence of judges, objectivity, transparency and dignity.

The Supreme Court confirmation toward of supervision by the Supreme received attention in Law Number 48 of 2009 concerning Judicial Power in Article 39 which consists of 4 paragraphs [1]. They are:

- The highest supervision of the administration of justice in all judicial bodies under the Supreme Court in exercising judicial power is carried out by the Supreme Court.
- In addition to the supervision referred in paragraph (1), the Supreme Court carried out the highest supervision of administrative and financial tasks.
- Internal control over the judge's behavior is carried out by the Supreme Court.
- Oversight and authority as referred in paragraph (1), paragraph (2) and paragraph (3) might not reduce the freedom of judges to examine and decide on cases.

The Supervision mentioned by the author was an activity of the unity patterns between thoughts and actions to carry out checks / observations on activities since planned to finish according to the resources owned in order to obtain several intact circumstances, correct, complete and avoiding mistakes which ultimately provide benefits. Supervision is also a part of the management function in an institution that also influences the system of works within the institution. The supervision based on the function of the judicial power is divided into 2 (two), namely the Supreme Court with its internal corporation and the Judicial Commission. Supervision by the Supreme Court with its internal corporation is an internal whereas the Judicial Commission is an external. Supervision in this paper is centered on supervision carried out by the Supreme Court with its Regulatory Corporation.

Supervisory Agency (Bawas) and The Supreme Court (MA) in 2017 have conducted regular supervision of 125 work units (satker) in the general court environment in regions I, II,

III, and IV which totaled 67 satker. After conducted the examination, there were qualification findings as follow:

- Judicial management obtained 484 findings. They were consisting of work programs, evaluation of activities, service standards, and so on;
- Trial administration obtained 624 findings. They were consisting of proceedings, case file minutations, etc.
- General administration obtained 2048 findings.
- There were 543 findings of public service. They were consisted of complaint handling, public information disclosure, legal aid services (Posbakum), and others.

Several forms of supervision were used by Bawas. There were 2642 complaints received / entered the Supreme Court Bawas with the following details:

- Incame handling of complaints:
  - Submitted directly to Bawas were 1789 complaints;
  - From the Supreme Court institutions / stakeholders were 362 complaints;
  - From SIWAS Applications were 328 complaints;
  - From SATGAS were 163 complaints.
- Followed up Handling of complaints:
  - 60 complaints were reviewed;
  - Examined 122 by Examination Teams;
  - 632 complaints were answered by a letter;
  - 203 complaints were delegated to the Court of Appeals;
  - 913 complaints were delegated to the court of first instance;
  - 264 complaints were memorandum;
  - 127 complaints were still in the process of resolving;
  - 321 complaints were filed.

Followed-up on complaints received by the Supreme Court Bawas led to disciplinary sanctions were imposed on 156 judicial officers. They were consisting of 60 judges, 11 clerks, 6 secretaries, 14 young clerks, 14 clerks in place, 21 clerks 9 seizures, 9 substitute seizures, 9 structural officials, 15 staff officials and 2 honorary staff.

Noting the form/qualification of findings were obtained from the Supreme Court Bawas as mentioned above, which important related to the implementation of the execution of civil decisions and in the opinion of the Author included in the administration of the trial. The qualifications of the findings were influenced by factors of substance, structure, legal culture and infrastructure owned by the district court.

The procedure for executing the decision was initiated by the existence of the request for execution which was registered

at the Registrar's Office of the District Court, aanmaning, confiscation of the execution until the execution is completed. All of them involved both parties, namely the Petitioner and the Respondent with the objective achieved yo legal certainty and dignified justice. Such execution procedures carried out by district courts which are based on articles in the HIR namely Article 195 and so on are legacies of the Dutch era that have weaknesses. They were including aanmaning trials that do not yet have the same standard in each district court, the amount of the cost of execution retribution, security in the execution of executions whose costs are still calculated by the Police and others. It determined the legal basis for the execution of civil decisions. There were weaknesses / deficiencies resulting in the legal certainty of the execution itself which has been awaited by justice seekers / justiciable since the case was registered.

The structure or institution in the execution of civil decisions were influenced by the organizational structure of the district court itself. There were the organizational structure of the district court, a Chair of a District Court (KPN) and a Deputy Chair of the District Court (WKPN) and judges. There were also KPN and WKPN as leadership elements in district courts. The execution and completion of the execution were led by the Head of the District Court (KPN) while the Deputy Chair of the District Court (WKPN) in the district court was the coordinator of the supervisor. Both of the KPN and the WKPN positions, which were leadership elements, organizationally the WKPN was under the KPN. So that, it had consequences for the execution, especially the supervision of executions carried out by the KPN could be overseen by the WKPN. KPN as the leader of the institution as well as the leadership of the execution was overseen by the WKPN as the coordinating supervisor. Of course, this situation affected the attitude of a WKPN in carrying out overall supervision in the district court institutions, especially the execution of civil decisions.

The legal culture that occurred in the district courts through the judiciary in carrying out the execution of civil decisions was still receiving attention. The benchmarks to be able to know the legal culture that occurred could be seen from the number of sanctions were imposed by Bawas in each year. One of the standards used was the code of ethics both of them by judges, clerks, bailiffs and employees / staff in general. The code of ethics was a guideline for the judiciary in carrying out their respective duties and functions as well as moral determiners of the judiciary itself.

Infrastructure from the district court was currently oriented towards the use of technology applications. The implementation of the principle of justice that was quickly translated into the mastery and used of technology by all justice institutions starting from the Supreme Court to the lower judicial body without exception the district court as a general justice institution. The community as justice seekers and users of justice institutions with various social stratifications must be utilize such technology applications. In the case of registration, it was known as an e-court form, e-payment, e-summons, and e-filing digitally. In fact, while the Chairman of the Supreme Court of the Republic of Indonesia was launching the e-litigation application, his excellency Prof. DR.H. Muhammad Hatta Ali, MH mentioned at the same time gave instructing to

Supreme Court and the judiciary entering 2020 all judicial institutions have been able to take advantage of this e-litigation application.

The substance, structure, legal culture and infrastructure were the deciding elements in the execution of civil decisions. These elements were interrelated with one another, influencing one function with other functions within the institution including the supervisory function carried out by the Supreme Court Bawas. The supervisory wheel at Bawas especially towards the completion of the execution of civil decisions was also the effectively influenced by the substance, structure, legal culture and infrastructure of the Bawas itself through legal politics. Legal politics according to Bellefroid was a part of legal science that examines changed in applicable law that must be made to meet the new demands of people's lives by stating that [2]: "*De rechtpolitiek onderzoekt, welke veranderingen in het maatschappelijk leven te voldoen. Zij zet den ontwikkelingsgang der rechts orde voort. Want uit het vroegere rechtsstelsels ontwikkelde 'Jus Constitutum' tracht zij het 'Jus Constituendum' of het recht der toekomst op te bouwen*". (Legal politics investigated what changes must be made to the current law, in order to meet the new requirements of social life and continue the development of an orderly law. For trying to make *ius constitutum* which was developed from the old legal systems, becomes *ius constituendum* or the law for the future) [3]. Therefore it was necessary to strengthen the oversight function in the completion of the execution of civil decisions through the political politics of the Supreme Court.

The problems in this research are:

- What is the basis for the urgency of the legal political reconstruction of civil settlement execution decisions through a strategy to strengthen the Supreme Court's oversight function?
- What is the legal political reconstruction model in the completion of the civil execution decisions through a strategy to strengthen the Supreme Court's professional and reliable supervision function?

## II. RESEARCH METHODS

The method of the research was the juridical normative and the statutory regulation approach. The purpose of the research want to get an answer about the urgency of the legal political reconstruction and how are the model of the legal political reconstruction settling the execution of the civil decision [4,5].

## III. RESULTS AND DISCUSSION

### A. The Basic Importance of Reconstruction

Legal Politics in the Settlement of Civil Decision Execution through Strategy of Strengthening the Supreme Court Supervisory Function.

1) *Legal substance aspects*: The supervisory function is expressly contained in Law Number 48 of 2009 concerning Judicial Power Article 39 paragraph (1) to paragraph (3) states that there is a Supreme Court oversight function on three matters, namely:

- Administration of justice;
- Administration and finance;
- Judge behavior.

The Supreme Court regulated the oversight function by Decision of the Chairperson of the Supreme Court of the Republic of Indonesia Number: KMA / 080 / SK / VIII / 2006 concerning Guidelines for Supervision Implementation within the Judiciary Institution, August 24, 2006 and Joint Decree of the Chairperson of the Supreme Court of the Republic of Indonesia and Chair of the Judicial Commission of the Republic of Indonesia Number 1. 047 / KMA / SK / IV / 2009 2. 02 / SKB / P.KY / IV / 2009 concerning the Code of Ethics and the Code of Conduct for Judges, dated April 8, 2009 and regulated the guidance function with the Decree of the Supreme Court of the Republic of Indonesia Number: 140 / KMA / SK / X / 2008 concerning Guidebook on Management and Implementation of Research, Development and Education and Training of Law and Justice, 31 October 2008.

The background of the birth of the policy was due to changes in the system of supervision and guidance of the judiciary, namely from the supervision system and judicial coaching that is dualistic into a one roof system of supervision and coaching in one area was the Supreme Court, then the Supreme Court as the highest state court has an additional function which includes the judicial field, but also non-judicial fields, namely the field of management. In the considerations point a-c of the Decree of the Chief Justice of the Supreme Court Number KMA / 080 / SK / VIII / 2006 the supervision conducted by the Supreme Court which was originally the non-judicial supervision, namely oversight of the organization, administration and finance becomes the authority of the department concerned.

In a structured judicial system there are courts that are the lowest to the highest court. In the perspective of the court's management, the relationship between the courts as the organizer of the court in order to uphold the law and justice, both those who are authorized to carry out and those who receive such supervision and guidance, cannot be viewed as purely hierarchical in nature, because each subject is an actor judicial power that is equal, independent and impartial [6]. Regulations regarding judicial oversight in the decision occurred after the amendment to the 1945 Constitution of the Republic of Indonesia, which recognizes the existence of two judicial oversight, namely external oversight carried out by the Judicial Commission and internal supervision carried out by the Supreme Court as a state court and supreme supervisor against the court below. Therefore, the decision classifies two types of internal supervision into inherent supervision and functional supervision and the handling of public complaints as the institutionalization of community supervision.

Inherent supervision was an oversight function that was inherent in the function of court leadership in the management perspective or the function of the superior court in the perspective of institutional arrangements. Functional oversight was a supervisor function that belongs to an organizational unit deliberately formed to carry out this function, which in the Supreme Court nomenclature was the Supreme Court

supervision agency. Therefore, the inherent supervision was different from the functional supervision which was the function given to the organizational unit or institution that was intentionally formed for it. The purpose of supervision in the decision was to obtain information regarding the administration of the judicial function in response to and response to the issuance of the policy which is used as a material for performance evaluation for court leaders in relation to the purpose of changing policy and / or action in order to increase effectiveness and efficiency. In the administration of justice, the target qualification to be addressed was the administration of justice by providing substantive justice, especially in the completion of the execution of civil decisions.

The basics of audit arrangements related to the handling of public complaints by the Supreme Court are as follows [7]:

- Did not interfere with the independence and impartiality of judges;
- Were closed;
- Orally or in writing;
- In a comfortable atmosphere;
- Avoided examinations by litigation and investigation;
- Presumption of innocence;
- Records, records and documentation, as well as correspondence were confidential;
- Respected for examined rights;
- Prohibition of intimidation, emphasis, and ensuing questions;
- The deadline for handling complaints was no more than 30 working days

In organizing complaint handling, it is regulated regarding administrative and technical procedures for implementation, verification, and preparation of reports.

Related to the completion of the execution of civil decisions, supervision could be carried out by the functional Supervisory Agency was supervision conducted to obtain answers to the proceedings of the judiciary, especially the stages of execution carried out by the Chair of the District Court as the head of execution as well as the leadership of the institution. Execution procedure in civil procedural law according to Article 196 HIR which regulated that if the defeated party did not want or neglected to fulfill the contents of the decision voluntarily, then the winning party (the plaintiff) submitted an application for execution, both verbally and in writing. Therefore, it was stipulated firmly that the execution of civil disputes cannot be carried out if the plaintiff did not submit an application for execution. The request for execution was addressed to the Chairperson of the District Court (KPN) who at the first level examined and decided the case (Article 195 paragraph (1) HIR). In the down payment of the HIR execution did not regulate the advance of execution. HIR only regulated execution costs taken from assets that have been auctioned as regulated in Article 197 HIR. Supreme Court Regulation (Perma) No. 3 of 2012 concerning the Cost of Case

Settlement Process and Its Management at the Supreme Court and the Subsequent Judiciary Regulations regulated that the component costs of the case settlement process, starting from the registration up to the evaluation of the implementation of civil case settlement, included the costs for:

- Stamp duty;
- Editor;
- Office stationery;
- Duplication of case files and documents;
- Trial consumption;
- Copy of the copy of the decision;
- Sending notification of the register number to the claimant court and the parties;
- Filing and binding of case files that have been reduced in popularity;
- Case settlement costs;
- Incentives for the process management team;
- Filing of case files; and
- Monitoring and evaluating case resolution.

The amount of the down payment process in the first instance court was regulated and determined by the head of the first court, based on the circumstances or geographical conditions of the court, so that the amount varies for each court.

2) *The institutional structure aspects of supervision:* The Supreme Court's Supervisory Agency (Bawas) has the task given by the legislation to assist the Secretary of the Supreme Court in carrying out oversight of the implementation of duties within the Supreme Court and the judiciary under it.

The number of human resources contained in the Supreme Court Supervisory Board (Bawas) of the Republic of Indonesia were 153 (one hundred fifty three) including 52 judicial technical personnel, 85 non-judicial technical personnel, and 16 honorary staff with 16 people composition of functional positions, structural officials, staff and honorary staff.

The Supervisory Agency consists of:

- Secretariat of the Supervisory Agency;
- Regional Inspectorate I;
- Regional Inspectorate II;
- Regional Inspectorate III;
- Regional Inspectorate IV.

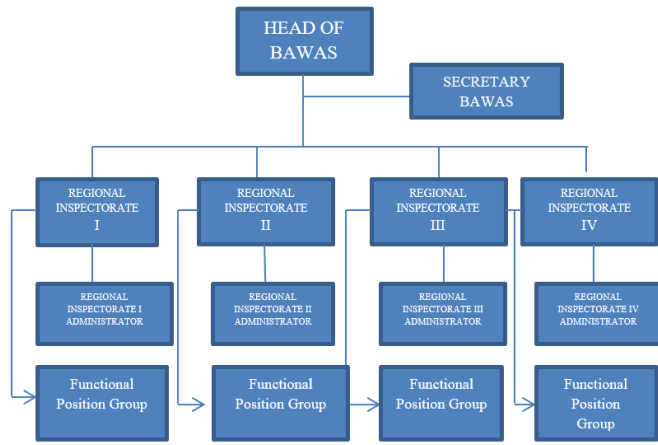


Fig. 1. Chart of organizational structure supreme court supervisory agency.

The authority of the Philippine MA is regulated in Article VIII Part 5 of The Philippine Constitution of 1987, which states that the Supreme Court shall have the following powers:

- Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus;
- Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in: (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto. (c) All cases in which the jurisdiction of any lower court is in issue. (d) All criminal cases in which the penalty imposed is reclusion perpetua or higher. (e) All cases in which only an error or question of law is involved;
- Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned;
- Order a change of venue or place of trial to avoid a miscarriage of justice;
- Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged...;
- Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law”.

Then, in section 3 it was stated that “The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be

automatically and regularly released.” Next in section 6 also mentioned the authority of the Supreme Court, namely “The Supreme Court shall have administrative supervision over all courts and the personnel thereof.” Finally, the authority of the Supreme Court is mentioned in Section 11, “...The Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.”

In supervising judges and the court's performance in general, it was carried out in various ways and involves different parties, as follows: 1. Court supervision was carried out directly by the Chair of the local Court of Appeals; 2. Remote supervision was carried out by Parliament in general aspects of the budget; 3. Supervision by the public was done more on the performance of the ministry. So it was limited to its responsibilities. The public Supervision was carried out by utilizing forums in parliament; 4. Supervision was carried out by the Inspection Generale de Services Jurisdsique which was domiciled under the Department of Justice. The inspections carried out related to routine judicial activities, ranging from judicial management to the disciplinary aspects of judges. Inspections were carried out regularly, but not infrequently spontaneously in response to public complaints.

3) *The legal cultural aspects:* The Code of Ethics and Judges, in this case were Supreme Court Justices and judges from all courts under the Supreme Court were determined by the Judicial Commission and the Supreme Court. The Code of Ethics and Judges were built on propositions that reflected the awareness that:

- The court was related to the idea of a rule of law, or what in this study was more fully called a democratic rule of law, and the rule of law and justice in relation to upholding the country's dignity and integrity,
- Judges were as the main actors of justice and accountability,
- Judge was a supervision related to the code of ethics and code of conduct.

Formally, the congress which was later referred to as the General Assembly in the judge's organization, the Indonesian Judges Association (IKAHI), and also the Supreme Court Work Meeting had formed and then perfected it, namely the Extraordinary Congress of IKAHI 1966 in Semarang, the IKAHI 2000 National Conference in Bandung, and then the 2002 Supreme Court Worked Meeting in Surabaya formulated 10 (ten) principles of the Code of Ethics and the Code of Conduct for Judges. The ten principles were formulated after comparing the principles that apply internationally as well as those that applied in several countries, including The Bangalore Principle's of Judicial Conduct. Furthermore, the Supreme Court issued a Decree of the Chief Justice of the Supreme Court Number KMA / 104A / SK / XII / 2007 December 19, 2007 concerning Guidelines for Implementing the Judges' Conduct Guidelines.

4) *The facilities and infrastructure aspects:* Facilities and infrastructure owned by the Supreme Court, especially the

Supervisory Agency, by utilizing the SIWAS application features. It was submitted to the public complaints which related to the duties and functions of the judiciary by all of judicial institutions. However, the SIWAS application was only in the form of complaints. It meant that only expected the public participation in reporting and complaints while the judiciary itself could not report on the progress of the judiciary through this application.

*B. The Model of Political Reconstruction of Legal Settlement of Civil Decisions through the Strategy of Strengthening the Supervisory Function in a Supreme Court*

*1) The strengthening supervision from the quality side:*

The findings obtained by the Supreme Court Supervisory agency need to be improved skills / skills in conducting supervision, for example by means of explanation which had the function to provide a clear clarity that could be trusted by all parties, especially those who supervised the activities that had been or were being carried out by the party being supervised so that the results of supervision as a finding always provided a fair and true truth. Explanation was an activity in supervision by connecting events that have occurred before conducting supervision and carried out in a predictive manner connecting events that will occur after supervision is carried out. Some possible explanations are explanations of necessity, functional, empirical, formal juridical, ontological and epistemological.

*2) The strengthening supervision from the quantity side:*

The amount of human resources contained in the Supreme Court Supervisory Agency as contained in the Performance Report of the Government Agencies (LKjIP) of the Supreme Court Supervisory Agency in 2017 above to oversee all of judicial bodies including the Supreme Court, general justice institutions, religious courts, state administrative courts. The military justice throughout Indonesia was a very difficult task and a challenge in itself. For example, for a general court institution, Bawas MA-RI must oversee 30 high court satker, 56 IA class district courts including 15 Special IA class units, 107 IB class court units and 107 II class II district courts and the task of general justice in the Supreme Court itself. Therefore, an increase in supervision is needed in a quantity that is proportional to the workload being supervised, especially demands for fair services from the court user community, the higher the performance control in the district court.

*3) The strengthening supervision from the juridical side:*

Strengthening supervision of the proceedings of the judiciary in particular related to the completion of the execution of civil decisions required synchronization and harmonization of legislation both vertically and horizontally. So, the strengthen position of the Supreme Court Supervisory Agency in carrying

out functional supervision of the judiciary were completed the execution of civil decisions in the district courts.

#### IV. CONCLUSION

The basic importance of the legal political reconstruction in the completion of the execution of civil decisions through the strategy of strengthening the Supreme Court's oversight function is due to the substance, structure and legal culture. Thus it is mentioned because the Oversight Body can be carried out functionally to get answers to the proceedings of the judiciary, especially the stages of execution carried out by the Chair of the District Court as the head of execution as well as the leadership of the institution. The Supreme Court regulates the oversight function by Decision of the Chairperson of the Supreme Court of the Republic of Indonesia Number: KMA / 080 / SK / VIII / 2006 concerning Guidelines for Supervision Implementation within the Judiciary Institution, August 24, 2006 and Joint Decrees of the Chairperson of the Supreme Court of the Republic of Indonesia and Chairperson of the Judicial Commission of the Republic of Indonesia Number 1. 047 / KMA / SK / IV / 2009 2. 02 / SKB / P.KY/ IV / 2009 concerning the Code of Ethics and the Code of Conduct for Judges, dated April 8, 2009 and regulates the guidance function with the Decree of the Supreme Court of the Republic of Indonesia Number: 140 / KMA / SK / X / 2008 concerning Handbook Regarding the Management and Organization of Research, Development and Education and Training of Law and Justice, 31 October 2008 in addition to facilities and infrastructure, the SIWAS application is only in the form of complaints which means only expecting participation the public to do reports and complaints while from the judiciary itself can not report the progress of the road its justice through this application. The model of legal political reconstruction in the completion of the execution of civil decisions through a strategy to strengthen the Supreme Court oversight function that can be carried out in quality, quantity and juridical.

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