

Derden verzet as a Legal Protection Effort for Third Parties In Realising Sustainable Development Goals (SDGs)

Siti Zulaichah, Yayuk Whindari, Sheila Kusuma Wardani Amnesti, Nurul Istiqomah
Sharia Faculty, State Islamic University Maulana Malik Ibrahim, Malang, Indonesia
zulaichah@uin-malang.ac.id

Abstract

This study aims to analyze the effectiveness of derden verzet as a legal protection mechanism for third parties in civil execution disputes in Indonesia and to assess its relevance to the achievement of Sustainable Development Goals (SDGs), particularly Goal 16 on peace, justice, and strong institutions. Employing normative legal research with a case approach, this article examines Decision No. 372/Pdt/2020/PT.Bdg and relevant procedural norms under the HIR/RBg framework, supported by doctrinal and human-rights-based justice literature. The findings show that derden verzet is conceptually designed to safeguard third-party property rights affected by final court judgments; however, its implementation remains constrained by procedural formalism, a heavy burden of proof, limited public awareness, and inadequate procedural safeguards in summons and evidentiary examination. In the analyzed case, the third party's attempt to reclaim property rights was impeded despite indications that the transfer of rights occurred in the absence of good faith, demonstrating a gap between procedural compliance and substantive justice. This condition undermines legal certainty and weakens access to justice, contradicting the institutional objectives promoted by SDG Goal 16. The novelty of this study lies in repositioning derden verzet not merely as an extraordinary procedural remedy but as a substantive rights-protection instrument within a human-rights-oriented civil justice reform agenda, while identifying key normative deficiencies such as unclear standing requirements and undefined criteria of "harmed interests." Accordingly, the study recommends clearer judicial guidelines and standardized procedural rules to strengthen third-party standing assessment, improve structured evidentiary review, and reduce excessive formalism to ensure more effective protection and a more accountable civil justice system.

Keywords: *Derden Verzet; Legal Protection; Opposition to Execution*

1. INTRODUCTION

Legal remedy is an effort regulated in law for a person or legal entity in certain cases aimed at opposing a judge's decision for parties who feel dissatisfied or feel that it does not fulfill a sense of justice. So that parties who feel they have not received justice use legal remedies to seek justice at the next level of court. In civil procedural law, legal remedies are divided into two types: first, legal remedies used by the parties against court decisions that do not yet have permanent legal force. Such as: resistance (*verzet*), appeal, cassation. While the second type is an extraordinary legal remedy, where this legal remedy is carried out on a judge's decision that has permanent legal force (*incracht van gewijsde*), such as third-party resistance (*derden verzet*), and judicial review (*request civil*),¹ as stated in the Constitution of the Republic of Indonesia,

¹ Syahrul Sitorus, "Upaya Hukum Dalam Perkara Perdata (Verzet, Banding, Kasasi, Peninjauan Kembali Dan Derden Verzet)," *Jurnal Hikmah* 15, no. 1 (2018): 63.

contained in the 1945 Constitution of the Republic of Indonesia, which clearly explains that the state of Indonesia is a state of law, then in this case, the state guarantees the supremacy of law by giving special emphasis to law enforcement in Indonesia.

In court decision number 372/Pdt/2020/PT.BDG there is a third party resistance (*derden verzet*) because there is a court decision that has permanent legal force but for one of the parties it does not fulfil a sense of justice. *Derden verzet* is regulated in articles 378-379 HIR and articles 195-196 RBg which explain the procedures for parties who do not participate in a trial case, but the results of the decision are detrimental to their interests, so that party can challenge the decision by means of third party resistance, or what is known as *derden verzet* in litigation procedures in civil trials.² This third-party resistance is based on a court decision that has permanent legal force for parties who are not participating in a case. However, in case number 372/Pdt/2020/PT.BDG, the party that filed the *derden verzet* was a party that had participated in the first trial, although in this case, the party that filed the *derden verzet* argued that it had never attended the trial. In essence, a court decision is only binding on the parties, but in order to fulfil the element of justice, third parties who feel aggrieved by the decision can file legal remedies. Previous studies on third-party opposition (*derden verzet*) in civil procedural law have been conducted by several scholars; however, these studies generally continue to position *derden verzet* within a purely normative-dogmatic and procedural framework, particularly with regard to the evidentiary requirements for ownership rights and the formal conditions governing the submission of third-party objections.

Research related to *derden verzet* is not the first research, there are several previous studies that discuss this issue, including research conducted by Maramis in 2017 which wrote related to third party resistance as an effort to suspend execution, in the writing it is explained that this third party resistance is an extraordinary legal effort given to parties who feel aggrieved by judicial decisions, but from several *derden verzet* efforts made by the parties, it was found that many submissions were rejected by the court because the opposing party could not prove ownership rights to the object of execution.³ The primary focus of these studies remains limited to obstacles in proving ownership rights, which has resulted in a significant number of third-party opposition applications being rejected by the courts. Consequently, such research has not yet examined in depth the systemic implications of these rejections for access to justice and legal protection afforded to third parties.

Furthermore, research was conducted related to legal considerations in the case of rebuttal (*derden verzet*) on land disputes according to Supreme Court circular letter No. 3/2018, where the results of the study explained that if a third party opposes, the opposing party must be able to

² Ivonne W.K. Maramis, "Perlawanan Pihak Ketiga (Derden Verzet) Sebagai Upaya Menangguhkan Eksekusi," *Lex Administratum* 5, no. 5 (2017), <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/16424>.

³ Ivonne W.K. Maramis, "Perlawanan Pihak Ketiga (Derden Verzet) Sebagai Upaya Menangguhkan Eksekusi," 39.

prove if the goods in dispute that will be executed belong to him and therefore have harmed his rights. If the party can prove then the plaintiff must be recognised as an honest plaintiff and the seizure must be revoked. Thus, the decision on the third party's opposition is only related to the confiscation of the execution that will be carried out, and does not decide on land ownership rights, but in practice, there are several decisions related to *derden verzet* that decide on the disputed land rights.⁴ This study has not examined the vulnerable position of third parties in legal proceedings, particularly when faced with court decisions that have permanent legal force.

Research by Azizah related to *derden verzet*, which aims to explain why third parties resist the determination of constating by the presiding judge. This is because in constating, third parties are able to prove that some of the objects of constating are theirs in accordance with the opponent's title deed.⁵ This research still focuses on the success of individual cases, and has not yet reached the stage of analysing the social function and normative objectives of these third-party opposition proceedings.

Furthermore, research conducted by Pradnyawati related to the Juridical Review of Third Party Resistance (*derden verzet*) to the Verstek Decision, where the results of the study show that the legal effort that can be made in a verstek decision is *verzet*, where this legal effort is carried out by the defendant, the judge, in considering the third party resistance to the verstek decision, does not ignore the provisions of the applicable civil procedural law. So, in his legal considerations, the judge declared the plaintiff an untrue plaintiff and rejected the plaintiff's resistance entirely.⁶ It should be noted that the party that will file a third-party resistance must be able to prove that the object in the execution study really belongs to them.

Overall, prior studies continue to position *derden verzet* primarily as a procedural mechanism, without advancing to an in-depth examination of its role in providing substantive legal protection for third parties—a role that bears broader relevance to the principles of access to justice and the protection of human rights. This study seeks to reposition *derden verzet* not merely as a civil procedural remedy, but as an instrument of third-party legal protection oriented toward substantive justice and contributing to the achievement of the Sustainable Development Goals (SDGs), particularly Goal 16 on peace, justice, and strong institutions.

In deciding a dispute, judges should adhere to legal objectives that can fulfil a sense of justice, certainty, and usefulness. The concept of legal objectives was initiated by Gustav Radbruch. This

⁴ Sonyendah Retnaningsih et al., "Pertimbangan Hukum Dalam Perkara Bantahan (Derden Verzet) Atas Sengketa Tanah Menurut Surat Edaran Mahkamah Agung Nomor 3 Tahun 2018," *Jurnal Yuridis* 1, no. 1 (2024): 78, <https://doi.org/10.35586/jjur.v1i1.7743>.

⁵ Fia nur azizah et al., "Derden Verzet Terhadap Konstatering (Penetapan Batas-Batas Tanah) Ketua Pengadilan Negeri," *Jurnal Private Law Fakultas Hukum Universitas Mataram* 5, no. 1 (2025): 142, <http://journal.unram.ac.id/index.php/privatelaw/index>.

⁶ Pradnyawati and I Nengah Laba, "Tinjauan Yuridis Mengenai Perlawanan Pihak Ketiga (Derden Verzet) Terhadap Putusan Verstek," *Wicaksana, Jurnal Lingkungan & Pembangunan* 2, no. 1 (2018): 25, <https://ejournal.warmadewa.ac.id/index.php/wicaksana/article/view/698>.

is important to apply so that as much as possible, a decision does not cause new disputes or derivative disputes in the future because of the decision of a case examined.⁷ The purpose of a person filing a lawsuit in court is to seek justice, so it is the duty of the judge to fulfill that sense of justice. A judge must have the ability to reconstruct an authoritative text to fulfill a sense of justice. As the purpose of the civil justice system in Indonesia provides space for every individual to obtain justice, one of which is with legal remedies for third parties. This mechanism aims to provide justice for parties who are not directly involved in a trial process but who have suffered losses due to decisions that have permanent legal force.

Derden verzet has a correlation with the *Sustainable Development Goals (SDGs)*, especially Goal 16, which emphasises peace, justice, and resilient institutions. However, in practice, *derden verzet* often faces obstacles due to several reasons, such as the heavy burden of proof, the lack of public knowledge of their rights under the law, the lack of legal aid for vulnerable groups, and the prolonged judicial process. Therefore, it is important to review the mechanism of *derden verzet* in order to achieve the goals listed in the SDGs. The purpose of this study is to analyze court decision number 372/Pdt/2020/Pt.Bdg regarding the judge's consideration of the third-party appeal filed by the previous party and to analyse the purpose of third-party appeals as a legal process conducted in court to realise the 16th pillar of the SDGs.

2. METHOD

This study employs a normative legal research method, using a case approach. The research is descriptive-analytical in nature, aiming to analyze the concept of justice in the legal remedy of *derden verzet* filed by a third party who feels aggrieved by the court's decision in case number 372/Pdt/2020/Pt.Bdg.⁸ In this decision, there is a discrepancy between the value of justice and the objectives of the Sustainable Development Goals, particularly Goal 16, and the procedural aspects of the *derden verzet* legal remedy. The opposing party in this case was declared ineligible to file a third-party objection because they had previously been included as a party in the original proceedings, even though they were never aware of the subject matter of that initial case, as their whereabouts were considered unknown both within and outside the territory of Indonesia. This situation stands in contradiction to the very purpose of law itself, namely the pursuit of justice. The legal materials in this research are divided into primary legal materials, obtained from legal provisions related to the *derden verzet* remedy, including HIR/RBG, civil procedural law, and jurisprudence; and secondary legal materials, derived from legal literature such as books, scholarly journal articles, as well as the concept of sustainable development as contained in the SDGs. The collection of legal materials was carried out through legal material analysis

⁷ Abdul Hakim, "Menakar Rasa Keadilan Pada Putusan Hakim Perdata Terhadap Pihak Ketiga Yang Bukan Pihak Berdasarkan Perspektif Negara Hukum Pancasila," *JHP Jurnal Hukum Dan Peradilan* 6, no. 3 (n.d.): 2017, <https://doi.org/10.25216/jhp.6.3.2017.361-378>.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana Prenada, 2005).

techniques and literature review, employing the method of syllogistic interpretation.⁹ The objective is to assess the purpose of legal protection embedded in civil procedural law in relation to *derden verzet* and its alignment with the goals of the SDGs, as well as to evaluate the effectiveness of the implementation of *derden verzet* as a legal remedy for third parties.

3. RESULTS AND DISCUSSION

3.1 Analysis Of Judges' Considerations In Decision Number 372/Pdt/2020/Pt.Bdg

The duty of a judge is to uphold the law, which includes the authority to discover or determine the applicable law. Therefore, a judge must have a clear understanding of the nature of the case and the legal facts involved. A judge is obliged to consider the legal facts before rendering a decision. Legal interpretation serves as one of the fundamental bases for a judge in carrying out their duties.¹⁰ The case in this decision is related to a dispute over the ownership of the collateral object to be executed. The parties filing as appellants are the heirs of the disputed object. Among them are Appellant I, Appellant II, Appellant III, and Appellant IV. Against the Appellant I, who in the original case was the Opponent of Confiscation, and the Appellant II, who was originally the Opponent of Confiscation. In the sitting of the case, it is explained that in the determination letter of the Depok District Court chairman Number: 19/19/Pen.Pdt/Aanm.Eks.Peng/2019/PN.Dpk Jo. Number: 136/Pdt.G/2015/PN.Dpk Jo. Number:618/PDT/2015/PT.Bdg Jo. Number:3151K/Pdt/2017, dated 14 October 2019, which has a letterhead: 'For the Sake of Justice Based on God Almighty', which in essence states about: 'Granting of Reprimand/Aanmaning', as referred to in the Stipulation of the Chairman of the Depok District Court, among others, states: For the appellants in this appeal to appear before the Chairman of the Depok District Court, in order to give a reprimand in accordance with the ruling of the Depok District Court Number: 136/Pdt.g/ 2015/PN.Dpk dated 9 August 2016, stating that the appellants who were originally Defendant I to hand over the land and house as the object of execution to the plaintiff in an empty and good condition, however, in this case, the Appellants jointly as defendants were never aware of the civil dispute between the Seized Defendant and the Seized Defendant at the Depok District Court with case number 136/ Pdt.G/ 2015/PN. Dpk which was decided in 2016. And this fact can be seen in the plaintiff's lawsuit letter which states that the whereabouts of Defendant II in this case are unknown both inside and outside the territory of Indonesia. So that this reason is the basis for Defendant II to file a third party resistance (*derden verzet*) to the decision of the court of first instance.

The resistance carried out by the Complainant in this case is based on the fact that the house and land to be executed belong to the Complainant and not to the Defendant Confiscator and have never been sold to the winning party in the initial case. Therefore, the Plaintiff in this case

⁹ Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Liberty, 2009).

¹⁰ Dian Ratu Ayu Uswatun Khasanah and Anggita Doramia Lumbanraja, "Perkembangan Interpretasi Hukum Oleh Hakim Di Indonesia Dalam Dominasi Tradisi Civil Law System," *Jurnal Ius Constituendum* 7, no. 2 (2022), <https://doi.org/10.26623/jic.v7i2.4799>.

concluded that he was entitled to file a resistance in accordance with the provisions of Article 208 HIR, point one, which states that the third party who filed the resistance has a relationship on the basis of ownership of the object to be executed. However, the fact that the third-party resistance (*derden verzet*) carried out by the plaintiff was not accepted in the court's decision because the plaintiff in this case had been seated as defendant II in the initial lawsuit, even though in the initial lawsuit, the plaintiff was not aware of this dispute. The judge's consideration in this decision is related to the legal standing of the Plaintiff, who does not have the right and does not have a strong reason as a third party (*derden verzet*).

The Plaintiff in this case is the heir of the object of execution that has been legally enforceable, but the Plaintiff in this case cannot be said to be the heir because at the time of this dispute the Plaintiff was not the owner, because the object of execution is still a budel inheritance (ie the property has never been divided to each heir). So the object is still the joint property of the heirs. Meanwhile, the complainant's parents had passed away before this case was decided. This case started when there was a debt and credit between the Complainant's parents and the Attorneys of Confiscation, in which case the Attorneys of Confiscation offered a loan to the Complainant's parents with a house certificate as collateral. It was agreed that the Involuntary Confiscator would provide a loan of 250,000,000, - but the loan was only given in the amount of 130,000,000, - and the rest was interest on the loan. This money loaned by the Defendant Confiscator will be made into a debt and credit guarantee agreement, and the Complainant's mother, in this case, was given a blank HVS paper to sign, which will later make the agreement letter. In this case, the respondent confiscator promised to provide the agreement letter in less than a week. In fact, the letter of agreement was never provided. Furthermore, the defendant confiscator argued as if he was the owner of the house and land which was the object of dispute in this case, on the grounds that the complainant in this case was one of the heirs of the owner of the house Sale and Purchase deed with number 33/2013 dated 23 October 2013 made before a notary with the binding deed of sale and purchase dated February 2013. In fact, according to the complainant, this is not true, and the complainant's parents never gave their consent and authorisation to sell the house and land to the defendant seizer. So that the deed of sale and purchase made before the notary cannot be called an authentic deed, because it was made based on a prohibited cause, contains legal defects, and contains cancellation, so that it has no legal force.

According to R Subekti, the sale and purchase binding agreement (PPJB) is an agreement made before the sale and purchase is carried out, between the seller and the buyer because there are several elements that must be fulfilled, such as the absence of a certificate because the payment on the sale and purchase has not been made. In this case, the binding of sale and purchase is an

assistance agreement that functions as a preliminary agreement (*pactum de contrahendo*). This agreement is regulated in the Civil Code in the third book, which is open.¹¹

Related to the debt and credit agreement letter promised by the defendant confiscator, never given to the parents of the plaintiff, the parents of the plaintiff are looking for people who will buy the house and land of the object of execution from other parties in order to redeem the original certificate that is still in the hands of the defendant confiscator. Capitalising on the evidence of photocopies of certificates belonging to the complainant's parents, a buyer was obtained who is currently the defendant seized. However, this third-party opposition lawsuit was not accepted *niet ontvankelijke verklaard* because it was considered that the position of the Complainant was not a party entitled to file a *derden verzet* because the complainant in the original lawsuit became defendant II and the complainant was considered not the owner of the ownership rights of the land and house to be executed because the property inheritance budel. The fact that this opposition lawsuit was filed against the execution carried out after the plaintiff's parents died then it should be in this case the position of the plaintiff's position is valid. Regarding the position of the defendant confiscator, who in the initial case of the tort has been declared as the winning party, it is still not right, because in the initial part of the deed there is a binding of sale and purchase, but at the end there is a statement as a guarantor for the return of the loan, this is clearly different. Can such a deed be said to be a deed that contains legal defects as an authentic deed, because it contains cancellations in it?¹²

Article 1335 of the Civil Code explains that an agreement without cause, or one that has been made for a false or prohibited cause, has no legal force. This means that any agreement or deed that does not meet the elements of a valid cause may result in having no legal force or may be declared *null and void*. As in this case, where the deed does not meet this element, the cause of the agreement at the outset related to the deed as collateral for debt subsequently changed its status to a binding sale and purchase agreement, which from the outset never changed the status of the collateral object. A legally defective deed also means that the deed does not meet the objective requirements of an agreement, particularly in terms of lawful cause as stipulated in Article 1320 of the Civil Code regarding the validity of an agreement. If the deed contains legal defects, the consequence is that the deed has no legal force or probative value in court, and cannot provide legal protection for the parties involved in the creation of the deed.¹³

Furthermore, Article 1338 of the Civil Code explains the principles of contracting as follows: (1) The principle of consensualism; (2) The principle of *pacta sunt servanda*; (3) The principle of

¹¹ Sarah Faizurah Khairunisa et al., "Analisis Hukum Perlawanan Pihak Ketiga Selaku Pemilik PPIBterhadap Sita Umum Boedel Pailit," *Jurnal Syntax Admiration* 5, no. 11 (2024): 4850, <https://jurnalsyntaxadmiration.com/index.php/jurnal/article/view/1536/1884>.

¹² Alberich Martin Setiawan and Nany Suryawati, "Keabsahan Pemenuhan Suatu Perjanjian Yang Tidak Memiliki Alas Hukum Yang Sah," *Wajah Hukum* 8, no. 2 (2024): 516, <https://doi.org/10.33087/wjh.v8i2.1439>.

¹³ Sudikno Mertokusumo, *HukumPerjanjian Indonesia* (Liberty, 2008).

freedom of contract; (4) The principle of good faith. In its development, several legal systems, such as in the Netherlands, distinguish good faith into two types, namely subjective good faith and objective good faith. Subjective good faith lies in property law, while objective good faith refers to a norm of behaviour for the parties in making a contract.¹⁴ A judge, in determining good faith, must consider propriety. Every contract should be based on *pretium iustum*, which refers to reason and equity, requiring a balance between losses and gains for both contracting parties. This is in line with the purpose of law, which is to realise justice. As in this case, where the parties, in this case, the parties filing the third-party appeal as heirs in their defence, stated that the object of the dispute was only used as collateral for a debt from the outset. However, in fact, during the trial, the contract was changed to a binding sale and purchase agreement without any prior agreement with the opposing party.

Notarial deeds are perfect and binding evidence, but in practice the deed can experience a decrease as evidence if there is a violation of the provisions contained in article 1869, where this article explains if a deed that cannot be enforced as an authentic deed, because of the lack of authority or competence of the public official concerned or because of a defect in its form, then it has the strength of a writing under the hand if signed by both parties.¹⁵ In this article, an authentic deed is considered underhand if the deed loses its authenticity due to the non-fulfillment of the formal requirements referred to in this article. The occurrence of degradation of the deed here is because there is a falsity or the existence of things that are not true, not in accordance with the will of the parties facing. This violates the objective requirements of an agreement, as in Article 1320 of the Civil Code. This article explains that the validity of a law has four conditions: Agreement, Capable, regarding a certain matter, and halal causation.¹⁶

Notaries, in carrying out their positions, can also commit an act that violates the law, one of which is by falsifying an authentic deed. This deed forgery can be done formally or materially. Formally, among other things, the deed is made not by an authorised party, while materially, there is a violation regarding the contents of the deed.¹⁷

Does the decision of the panel of judges in this case violate the principle of *motiveringsplicht* and contain elements of *niet voldoende gemotiveerd*, so that it can be cancelled? As is known, the principle of *motiveringsplicht* is not explicitly explained in a special article, but this principle is elaborated in article 184 HIR/195 RBG regarding the judge's considerations that must be

¹⁴ Ridwan Khairandy, *Kebebasan Berkontrak Dan Pacta Sunt Servanda Versus Iktikad Baik; Sikap Yang Harus Diambil Pengadilan* (FH UII Press, 2015), 56.

¹⁵ Wulan Agustini, "Pertanggungjawaban Notaris Terhadap Akta Yang Cacat Hukum," *Presumption of Law* 6, no. 1 (2024): 11, <https://DOI.ORG/10.31949/JPL.V6I1.385>.

¹⁶ Pius Eliadi Hia et al., "Analisis Yuridis Terhadap Putusan Batal Demi Hukum (Null and Void) Menurut Ketentuan Pasal 1335 KUH Perdata," *Jurnal Dunia Pendidikan* 5 (2024): 487, <https://jurnal.stokbinaguna.ac.id/index.php/JURDIP/article/view/3141/1484>.

¹⁷ Vivi Carolin Wijaya et al., "Perlindungan Hukum Secara Keperdataan Bagi Klien Notaris Yang Mengalami Kerugian Akibat Diterbitkannya Akta Autentik Yang Cacat Hukum Oleh Notaris," *Acta Djurnal: Jurnal Ilmu Hukum Kenotariatan* 7, no. 1 (2023): 17, <https://doi.org/10.23920/acta.v7i1.1332>.

contained in a decision. The purpose of this principle is to ensure legal certainty and as a basis for filing further legal remedies. If this principle is not fulfilled, the implication of the decision can lead to legal uncertainty, because it is considered legally flawed. Furthermore, the *niet voldoende gemotiveerd* element means that the decision does not provide sufficient consideration. The decision does not consider all the arguments of the parties and does not evaluate the evidence as a whole.

Judges in giving decisions should provide clear considerations; providing complete and clear considerations can make a decision have legal certainty. The failure to construct sound legal reasoning in a judge's decision may result in a ruling that violates this principle. Therefore, legal reasoning within a decision serves as a crucial foundation for a judge to analyze a case based on the applicable legal facts. Legal reasoning can be developed by the judge through legal interpretation and legal construction. A decision may be deemed *niet voldoende gemotiveerd* (insufficiently reasoned) if the rulings of the lower courts—whether at the first instance or appellate level—are considered to have failed to fulfill the element of justice for the parties involved due to inadequate legal reasoning. Consequently, such a decision may be regarded as flawed or imperfect.¹⁸

The duties and functions of judges, as regulated in the Law on Judicial Power, stipulate that the primary tasks of a judge are to examine, adjudicate, and decide cases. In essence, a judge must be responsible for the legal products he or she issues, whether in the form of judgments or rulings, and must base them on proper and sound legal reasoning.¹⁹ This article explains that in considering a decision, a judge is not only required to determine the applicable law for a case under examination, but also the relevant legal norms. A judge is expected to thoroughly understand the case being examined.

In fact, in case number 372/PDT/2020/PT.BDG, the panel of judges concluded that the legal standing of the opponent had neither the right nor sufficient grounds to file a third-party opposition (*derden verzet*) based solely on Article 378 Rv, which regulates the submission of such opposition even though the opponent was not a party in the original case. According to this article, *derden verzet* may be filed either against a judgment that has already been executed or against a conservatory attachment (*conservatoir beslag*) imposed on property belonging to a third party. The purpose of this provision is to protect individuals who were not parties to the case, allowing them to defend their rights and ensuring the principle of *audi et alteram partem* for third parties affected by a court decision. In this case, however, the opponent's position in the initial proceedings—as Defendant II—was not that of the owner of the collateral object, since the

¹⁸ Aditya Yuli Sulistyawan, and Aldio Fahrezi Permana Atmaja, "Arti Penting Legal Reasoning Bagi Hakim Dalam Pengambilan Putusan Di Pengadilan Untuk Menghindari 'Onvoldoende Gemotiverd'," *Jurnal Ius Constituendum* 6, no. 2 (2021), <https://doi.org/10.26623/jic.v6i2.4232>.

¹⁹ Pasal 11 ayat (1), undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman

heir, namely the opponent's parent, was still alive. In the original case, the opponent's position was merely that of a power of attorney holder. However, in the third-party opposition (*derden verzet*) proceedings, the opponent acted as an heir, since the owner of the collateral object (the opponent's parent) had passed away. Therefore, the opponent's legal standing in filing the third-party opposition was appropriate.²⁰

According to Articles 378–379 Rv, *Staatsblad* 187 No. 52 jo 1849 No. 63, a third-party opposition (*derden verzet*) may be granted by the judge if two conditions are proven: first, that the third party has a legitimate interest, and second, that the third party's rights are clearly harmed. Article 378 Rv states that a third party is entitled to file an opposition against a judgment that infringes their rights, whether they act personally or through a lawful representative, or if the party they represent was not summoned to the court proceedings, or because of joinder of actions or intervention in a case in which they had previously been a party.²¹ Meanwhile, if we go back to article 195 paragraph (6) of the Criminal Code, it states that the resistance to the decision, as well as from another person who states that the confiscated goods belong to him, is faced and tried like any dispute about coercive efforts ordered by the district court, in which the jurisdiction of the decision occurred.

It should be in deciding a case that is declared null and void or declared unacceptable because of errors or omissions in proceedings (*vormfouten en vormverzuimen*) is not an absolute requirement in imposing a verdict, it is necessary to de-formalize the civil procedural law so that there is a simplicity of proceedings in the judicial process so that the procedure is not convoluted with existing formalities.

3.2 Third Party Resistance (*Derden Verzet*) As an Access To Justice In Achieving SDGs in Indonesia

Until now, the process of resolving civil disputes in court still uses provisions sourced from the HIR and RBG, which were adopted by the Indonesian government based on the principle of concordance. The existence of civil procedural law, which is still rooted in the legacy of the Dutch East Indies government, until now there are several things that are able to provide answers to the problems that occur. Our society today is very dynamic, so it is necessary to have new legal rules that can fulfil a sense of justice. This effort has been made in several regulations related to civil procedural law, including Law Number 48 of 2009 concerning Judicial Power. However, the fact is that several regulations that have been passed still have an impact on the difficulties in the practice of trial law. And to overcome this, the Supreme Court issued other regulations, including PERMA and SEMA. There are several things related to the legal vacuum that occurs due to several things, including the execution process, the stages of resolving the

²⁰ Putusan Nomor 372/PDT/2020/PT.BDG

²¹ Sonyendah Retnaningsih et al., "Pertimbangan Hukum Dalam Perkara Bantahan (*Derden Verzet*) Atas Sengketa Tanah Menurut Surat Edaran Mahkamah Agung Nomor 3 Tahun 2018," 80.

dispute process, and the high costs of resolving civil disputes in court.²² It is necessary to optimise civil procedural law for efficient case settlement, as well as fulfilling the elements of justice for the justice-seeking community. In the process of confiscation, the element of caution is very important so that the decision does not harm the party who is entitled to the object of confiscation.

In practice, *derden verzet* can be carried out in two kinds, first *derden verzet* is carried out against execution seizure, and second, *derden verzet* is carried out against security seizure. Third-party resistance in execution confiscation is carried out against a legally binding court decision, while third-party resistance against security confiscation is carried out on the object of the confiscation guarantee based on a court decision that has not been legally binding.²³ The requirement for filing a counterclaim is that there is a loss obtained by the third party. The provisions of Article 195 paragraph (6) HIR explicitly state that third parties who will file a *derden verzet* are only based on the argument of property rights. The justification for opposing the execution of goods that have been pledged must have relevance to delay the execution, so the quality is included in the classification of non-executable execution.²⁴ Building effective, accountable, and transparent institutions is a goal that is relevant to one of the Sustainable Development Goals (SDGs) initiated by the United Nations. The 16th pillar of the SDGs is Peace, Justice and Strong Institutions, which focuses on reforming justice systems and improving access to legal aid and fair trials. These functions are based on human rights. The *derden verzet* mechanism reflects that civil procedural law recognises that any process in a trial decision can affect parties outside the case, if the decision can be proven to violate the rights of these third parties. The existence of third-party opposition can strengthen a fair and transparent legal system to protect the rights of individuals in a judicial process.²⁵

The Sustainable Development Goals comprise 169 targets, 319 indicators, and 17 overarching goals, as illustrated in the figure above. These 17 goals are expected to be achieved by the year 2030.²⁶ Among its pillars, Goal 1 on ending poverty has received considerable attention in terms of achievement, with various measures being undertaken to eradicate poverty. The second goal is to achieve food security and improved nutrition; the third goal is to ensure that every individual can enhance their well-being; the fourth goal is to realize equitable and inclusive quality

²² Dwi Agustine, "Pembaharuan Sistem Hukum Acara Perdata," *Jurnal RechtsVinding Media Pembinaan Hukum Nasional*, 2017.

²³ Sakila Andra and Fauziah Lubis, "Upaya Hukum Derden Verzet Terhadap Sita Eksekusi Perspektif Hukum Acara Perdata," *Quantum Juris: Jurnal Hukum Modern* 6, no. 3 (2024): 234, <https://journalpedia.com/1/index.php/jhm/article/view/2157/2175>.

²⁴ Anggreany Arief and Azwad Rachmat Hambali, "Upaya Hukum Perlawanan Pihak Ketiga (Derden Verzet) Terhadap Putusan Hakim Yang Telah Berkekuatan Hukum Tetap (In Kracht Van Gewijsde)," *Indonesian Journal of Legality of Law* 6, no. 1 (2023): 10, <https://doi.org/10.35965/ijlf.v6i1.385>.

²⁵ *Sustainable Development Goals*, n.d., <https://sdgs.un.org/goals/goal17>.

²⁶ Ghulam Zakiyyan Dzulqarnain et al., *Implementasi Program Sustainable Development Goals (SDGs) Dalam Upaya Penanggulangan Kemiskinan Di Kota Sukabumi*, 9, no. 1 (2022): 109, <https://doi.org/10.37676/professional.v9i1.2505>.

education; and the fifth goal is to achieve gender equality and empower women and girls.²⁷ Furthermore, Goal 6 on clean water and sanitation seeks to ensure access to safe water as a fundamental human need, which not only has a direct impact on health but also influences social, economic, and environmental well-being. Poor access to clean water and sanitation can lead to decreased work productivity and increased healthcare costs.²⁸ Furthermore, Goal 15 on life on land is expected to protect, restore, and support terrestrial ecosystems, such as forests and biodiversity, as well as to halt land degradation. Meanwhile, Goal 16, which serves as a key point in analyzing this study, aims to promote peaceful and inclusive societies by ensuring access to justice and fostering the development of effective, resilient, and independent judicial institutions capable of addressing external influences. SDG Goal 16 promotes peaceful and inclusive societies by ensuring access to justice for all and building effective, accountable, and inclusive institutions at all levels. Governments, civil society, and communities must work together to find long-term solutions to strengthen the rule of law and promote human rights. Equal access to the judiciary is essential to protect individual rights and to resolve conflicts within the justice system. Institutions that do not operate in accordance with legitimate laws are vulnerable to arbitrariness and abuse of power, thereby reducing their effectiveness in delivering public services.²⁹

The SDGs serve to solve development problems more comprehensively, both qualitatively and quantitatively. This solution refers to the complete resolution of each goal and target. This is in line with the concept of the Indonesian rule of law, which is explicitly stated in the Constitution of the Republic of Indonesia, abbreviated as UUD NRI 1945. This basic law is the source of all laws in Indonesia. In the concept of the rule of law, the actions of the ruler must be based on the applicable law, not just based on power alone. The welfare of the people is the main thing; this goal can be achieved together, one of which is by reforming the legal field, especially in the realm of justice.³⁰

The United Nations (UN) has committed to cooperating with the Government of Indonesia in building a prosperous, democratic, and just nation, among other things, by ensuring access to inclusive judicial services. Judicial development is expected to benefit all people and provide protection for the rights of future generations. Grounded in a shared commitment to the Sustainable Development Goals, this framework serves as a guide for strategic collaboration

²⁷ E Mulya Syamsul and Ibnudin, "Keselarasan Indikator Sdgs Dengan Nilai Maqoshid Syariah," *Maro: Jurnal Ekonomi Syariah* 4, no. 1 (2021): 105, <https://doi.org/10.31949/maro.v4i1.5560>.

²⁸ Lalu Galeh Inggil Fatriсты et al., "Peran Air Bersih Dan Sanitasi Dalam Meningkatkan Kualitas Hidup: Tinjauan Literatur Terhadap Pencapaian Tujuan SDGs 2030," *Jurnal Pendidikan, Sains, Geologi, Dan Geofisika* 6, no. 1 (2025): 597, <https://jpfis.unram.ac.id/index.php/GeoScienceEdu/article/view/598/536>.

²⁹ *Sustainable Development Goals*.

³⁰ Fayza Ihafa et al., *Mewujudkan SDGs Di Bidang Hukum: Peran Serta Mahasiswa Hukum Dalam Pembangunan Hukum*, 1, no. 4 (2022): 136, <https://conference.untag-sby.ac.id/index.php/snhp/article/download/1121/577>.

between the government and the UN until 2030.³¹ Structural injustices within judicial institutions may undermine public trust in the judiciary. Therefore, concrete actions are required to restore and strengthen the capacity of judicial institutions.

Normatively, law enforcement aims to realize conformity between what is stipulated in the rules and what occurs in reality. This can only be achieved if the law that serves as the basis for behavior is derived from the objective conditions of society. A law that aligns with societal conditions becomes the ultimate goal of law. The purpose referred to here is the realization of justice, legal certainty, and legal benefit. The awareness to achieve these goals must serve as the foundation for law enforcers as the main actors in its realization. Thus, in practical references or within any judicial system, the ultimate aim is to attain justice. Although justice is abstract in nature, the purpose of law always remains directed toward justice.³²

According to Satjipto Raharjo, establishing a state of law does not only require regulations, but requires a long process and is supported by strong and sturdy institutions that are free from interference from other parties, free from intimidation.³³ The status and position of judges have undergone several changes as stipulated in the laws on judicial power. From the sequence of amendments, it can be seen that in Law No. 4 of 1970, the provisions regarding judicial officials concerned the requirements for appointment and dismissal of judges, as well as the authority of the head of state to appoint and dismiss judges. Subsequently, in Law No. 4 of 2004, Chapter IV was revised to regulate the position of judges and judicial officials, distinguishing judges from other judicial officers, with judges defined as officials who exercise judicial power. Later, in Law No. 48 of 2009, the chapter title was amended to Judicial Power Holders, and Article 19 stipulates that judges and constitutional judges are state officials who exercise judicial power as regulated by law.³⁴ From the various changes in the status of judges, it can be concluded that the term state official refers to an official whose working environment is within a state institution that constitutes an organ of the state, along with its derivatives in the form of supporting state institutions. Such officials perform their functions for and on behalf of the state.³⁵ From the status and position of judges, it can be concluded that under Law No. 4 of 1970, judges were strongly bound to the executive power, as their appointment and dismissal were carried out by the Head of State. In contrast, under Law No. 4 of 2004 on Judicial Power, there was a conceptual separation between judges and other judicial officials, with judges positioned as the holders of judicial power. Furthermore, Article 19 of Law No. 48 of 2009 affirms that judges,

³¹ *United Nations & Government of Indonesia. United Nations Sustainable Development Cooperation Framework (UNSDCF) Indonesia 2021–2025. Jakarta: United Nations, 2021., n.d., <https://indonesia.un.org>.*

³² Samsul Wahidin, *Politik Penegakan Hukum Di Indonesia*, pertama (Pustaka Pelajar, 2017), 39.

³³ Wulan Agustini, “Pertanggungjawaban Notaris Terhadap Akta Yang Cacat Hukum,” 4.

³⁴ Novianto Murti Hantoro et al., *Hakim: Antara Pengaturan Dan Implementasinya*, 2nd ed. (Yayasan Pustaka Obor Indonesia, 2018), 12.

³⁵ Mahfud MD, *Politik Hukum Di Indonesia* (Rajawali Pers, 2017).

including constitutional judges, are state officials and holders of judicial power. This law further strengthens the independence of the judiciary.

Satjipto Rahardjo's argument underscores that the establishment of a *state based on the rule of law* cannot be achieved merely through the existence of written regulations, but instead requires a long institutional process supported by strong and resilient judicial institutions that are free from external interference and intimidation. In this context, the evolving legal status and position of judges within Indonesia's judicial power legislation reflects a gradual paradigm shift from structural dependence toward strengthened judicial independence. Under Law No. 4 of 1970, judges were normatively positioned in close proximity to executive power, as their appointment and dismissal were vested in the Head of State, creating a potential channel for political influence over judicial authority. This arrangement indicates that judicial functions were not yet fully insulated from executive control, thereby weakening the institutional guarantees of impartial adjudication. Subsequent reform is evident in Law No. 4 of 2004, which introduced a clearer conceptual separation between judges and other judicial officials by defining judges as the primary holders of judicial power, thereby reinforcing their distinct constitutional role. The trajectory of institutional strengthening culminates in Law No. 48 of 2009, particularly Article 19, which affirms that judges and constitutional judges are state officials exercising judicial power as regulated by law. The designation of judges as "state officials" in this sense is not merely administrative, but reflects a legal construction that situates judges as organs of the state entrusted with exercising judicial authority on behalf of the state under conditions of independence. Accordingly, these legislative developments demonstrate a consistent reform direction toward an autonomous judiciary, supporting the broader proposition that a robust and interference-free judicial institution is a fundamental prerequisite for realizing a substantive rule-of-law state.

Legal thought needs to return to its fundamental philosophy, namely that law exists for human beings. With this philosophy, human beings become the determinant and the focal point of law. Therefore, law is not an institution detached from human interests. The interests of the people must be the ultimate goal of law. In progressive legal theory, the process of change is no longer centered on regulations, but on the creativity of law enforcers in actualizing the law within the proper space and time. For the concept of progressive law, law does not serve itself, but rather aims for purposes beyond itself. According to Raharjo, progressive law shares similarities with the school of legal realism in its logic, namely that law is not only viewed from the perspective of internal legal logic, but also assessed based on the social objectives it seeks to achieve and the consequences that arise from the operation of law.³⁶ The role of law is very important in achieving the SDGs, in addition to the three main legal instruments, namely regulations and legal

³⁶ Mardona Siregar, *Teori Hukum Progresif Dalam Konsep Negara Hukum Indonesia*, 8, no. 2 (2024): 6, <http://dx.doi.org/10.24127/mlr.v8i2.3567>.

institutions, and regulations. These three instruments also need to be supported by developing legal education to encompass new cultural knowledge. Furthermore, legal development must be integrated with other factors, such as economic, social, political, cultural, and religious factors. Adaptive and relevant legal development in line with global changes will lead to global goals, which share common objectives in achieving the SDGs.

Decisions in a judicial process must be able to provide legal certainty for justice seekers. According to Maxeiner, legal certainty has two meanings: the first is to guide the community to obey the law, and the second is to protect the community against arbitrary actions. In essence, what a judge must do in examining a case is to resolve and settle it. Therefore, the judge must seek or discover the applicable law in order to resolve the case. In the classical view put forward by Montesquieu and Immanuel Kant, judges in applying statutes to legal events do not in fact exercise their role independently. Judges are regarded as the “mouthpiece of the law,” and therefore cannot alter the binding force of the law itself, since, according to this classical perspective, statutes are the sole form of positive law. Based on this view, judicial activity is nothing more than a syllogistic process. This is different from the legal system in Indonesia, which recognizes heteronomous legal discovery insofar as judges are bound by statutes, yet legal discovery nonetheless contains strong elements, because judges often have to interpret or supplement statutory provisions according to their own reasoning.³⁷

The mechanism of third-party opposition (*derden verzet*) is intended to provide a legal remedy for injustices experienced by parties who feel aggrieved by a court decision, even though they were not involved from the outset of the judicial process at the first instance. It is expected that such court decisions also take into account the rights of other parties that may have been overlooked. *Derden verzet* is thus anticipated to enhance transparency and accountability within the judicial system, in line with the objectives of the rule of law. This third-party opposition carries several legal consequences for the parties involved. First, the judge is required to re-examine the case by summoning all parties who were engaged in the original proceedings at the first instance, as well as the third party filing the opposition. This process enables a comprehensive review of the previously rendered judgment. Second, based on this re-examination, the judge may either annul the decision or uphold it, depending on the findings established during the comprehensive reassessment.³⁸ The legal remedy of third-party opposition (*derden verzet*) still contains several procedural gaps. Among these are the lack of clear requirements for parties intending to file a *derden verzet*; the absence of well-defined criteria regarding the rights or interests considered to be harmed; and the insufficient procedural

³⁷ Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*.

³⁸ Bintang Sri Bulan and Fauziah Lubis, “Tinjauan Yuridis Mengenai Perlawanan Pihak Ketiga (Derden Verzet) Terhadap Putusan Verstek,” *Jurnal Ilmu Hukum Prima* 7, no. 2 (2024): 171, <https://jurnal.unprimdn.ac.id/index.php/IHP/article/view/5235/3492>.

framework governing the process of *derden verzet*, including the mechanism for summoning the parties involved.³⁹

Related to the problem of civil procedural law, the law that applies in court should be able to provide justice with a simpler legal process, as is one of the principles in civil procedural law, especially in the regulation of legal remedies, *derden verzet*, which in its purpose is used for third parties who feel aggrieved by the judge's decision to be able to seek justice related to their property rights. Access to justice should not only be related to mechanisms or infrastructure, but also to how a person's condition in accessing justice in the field of law for every legal problem that befalls him. The need for law can be said to achieve justice if it has been fulfilled by the existence of legal aid through judicial institutions.⁴⁰ The need for fair and straightforward institutions and procedures would be a viable solution to executions that comply with human rights standards to achieve justice and legal protection. It can be concluded that if the applicable mechanism is ineffective, the judge will only refer to the applicable procedures. In this case, the judge only focused on the role of the party currently filing a third-party appeal as a co-defendant in the original case. However, in this case, the judge disregarded the plaintiff's statement that they had never received a writ of summons and had never been a party to the original case. There should be a special procedure to examine the plaintiff's evidence if the plaintiff does indeed have a legal relationship with the ownership of the disputed object.

4. CONCLUSION

This study concludes that the judicial reasoning in Decision No. 372/Pdt/2020/PT.Bdg indicates a potential violation of the principle of *motiveringsplicht* and contains elements of *niet voldoende gemotiveerd*, as the court relied excessively on formal procedural considerations while insufficiently assessing the claimant's substantive legal interest and evidentiary position in filing *derden verzet*. As a civil procedural remedy, *derden verzet* is intended to protect third parties whose rights are harmed by court decisions, thereby operationalizing the principle of *audi et alteram partem* and strengthening access to justice as promoted under SDG Goal 16 on peace, justice, and strong institutions. The novelty of this article lies in repositioning *derden verzet* not merely as a technical procedural mechanism, but as a substantive legal protection instrument aligned with human-rights-based justice system reform, while simultaneously identifying procedural gaps in its current implementation, including unclear standing requirements, undefined criteria of "harmed interests," and weak procedural guidance on summons and

³⁹ Bintang Sri Bulan and Fauziah Lubis, "Tinjauan Yuridis Mengenai Perlawanan Pihak Ketiga (Derdan Verzet) Terhadap Putusan Verstek."

⁴⁰ M Rizki Yudha Prawira, "Reviu Hukum Dan Hak Asasi Manusia Dalam Rangka Pemenuhan Akses Terhadap Keadilan: Mempertimbangkan Elemen Dari Kemampuan Hukum," *Dharmasisya Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia* 1, no. 2 (2021): 889, https://www.researchgate.net/profile/M-Rizki-Yudha-Prawira/publication/374005076_Reviu_Hukum_Dan_Hak_Asasi_Manusia_Dalam_Rangka_Pemenuhan_Akses_Terhadap_Keadilan/links/65094a1f61f18040c20b78d9/Reviu-Hukum-Dan-Hak-Asasi-Manusia-Dalam-Rangka-Pemenuhan-Akses-Terhadap-Keadilan.pdf.

evidentiary examination. Accordingly, this study recommends the development of clearer and more standardized procedural rules for *derden verzet*, including specific judicial guidelines for assessing third-party standing, a structured evidentiary review mechanism to verify ownership or legal relationships to disputed objects, and simplified procedural pathways to prevent excessive formalism. Strengthening these procedural safeguards is essential to enhance legal certainty, prevent derivative disputes arising from flawed execution processes, and ensure that civil justice institutions operate in a transparent, accountable, and rights-protective manner consistent with SDG Goal 16.

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