

LEGAL RECONSTRUCTION OF IMPLEMENTATION LEGALLY BINDING VERDICT IN INDUSTRIAL RELATIONS COURT

Sri Gilang Muhammad Sultan Rahma Putra

*Mahkamah Agung Republik Indonesia
srigilangmubammadsrp@gmail.com*

Abstract

The existence of industrial relations courts until now still can not provide adequate legal protection to justice seekers. This article begins with the existing legal problems in the form of not implemented legally binding of industrial relations court verdicts. The unapplied verdicts have resulted in the exclusion of the rights of justice seekers. This paper identifies the problem related to normative perspective and provide solutions through legal reconstruction from the normative view. Then, the problems are examined using normative legal research methods based on statute approach and historical approach as well as case approach. By examining several research results it is known that the legal vacuum which regulates sanctions against those who do not intend to enforce industrial relations court rulings that have legal force still need to be addressed immediately to guarantee the rights of the seekers of justice in the industrial relations court. This paper recommends to establish a Supreme Court Regulation on the implementation of institutional force on industrial relations disputes cases and the need for amendment of Law Number 2 Year 2004 on Industrial Relations Dispute Settlement.

Kehadiran pengadilan hubungan industrial sampai saat ini masih belum bisa memberikan perlindungan hukum yang baik terhadap para pencari keadilan. Artikel ini berawal dari adanya permasalahan hukum berupa tidak terlaksananya putusan-putusan pengadilan hubungan industrial yang telah berkekuatan hukum tetap. Tidak terlaksananya putusan tersebut telah menyebabkan terabaikannya hak-hak para pencari keadilan. Tulisan ini mencoba mengidentifikasi masalahnya dari segi normatif dan memberikan solusi berupa rekonstruksi hukum dari sisi normatif. Permasalahan dalam artikel ini dikaji dengan menggunakan metode penelitian hukum normatif yang berbasis pada pendekatan perundang-undangan

(statute approach) dan pendekatan historis (historical approach) serta pendekatan kasus (case approach). Dari pengkajian terhadap beberapa hasil penelitian diketabni bahwa kekosongan norma hukum yang mengatur sanksi terhadap pihak – pihak yang tidak mau melaksanakan putusan pengadilan hubungan industrial yang telah berkekuatan hukum tetap perlu segera diatasi guna menjamin hak – hak para pencari keadilan pada pengadilan hubungan industrial. Tulisan ilmiah ini merekomendasikan perlunya dibentuk Peraturan Mahkamah Agung tentang penerapan lembaga paksa badan pada perkara perselisihan hubungan industrial serta perlunya dilakukan perubahan pada Undang-Undang Nomor 2 Tahun 2004 tentang Penyelesaian Perselisihan Hubungan Industrial.

Keywords: Industrial Relations, Court Decision, Implementation, Law Enforcement, Inkracht

Introduction

Work is an important right for every human being, because working is one of the human endeavors to be able to survive to continue their lives. Therefore, work becomes one of the basic rights of every human being protected by the constitution of each country. In the 1945 Constitution of the Republic of Indonesia that is the constitution of the Republic of Indonesia, the right to work is protected based on article 27 paragraph 2 which states, “Every citizen has the right to work and a decent living for humanity.” In addition to article 27 paragraph 2, the right to work is also protected in Article 28D paragraph 2 which states that, “Every person has the right to work and to receive fair and appropriate compensation and treatment in an employment relationship.”

Work relationships that involve interaction between people certainly have the potential for conflict between the perpetrators. In the case of employment relations, the conflict that occurs is a conflict between the employee and the employer. Conflicts that occur certainly need to be resolved fairly and well. Fair and good resolution of conflicts is needed so that conflicts do not become prolonged, causing problems in people’s lives. The tools available to settle industrial relations disputes in accordance with statutory regulations include the bipartite forum, tripartite forum, mediation, arbitration, conciliation and industrial relations courts.

The existence of industrial relations courts as a means of resolving industrial relations disputes which generally involves disputes between employers and workers so far has not been able to provide satisfaction for justice seekers, especially from the workers/laborers. The condition of dissatisfaction is reflected in several research findings with the topic regarding the implementation of industrial relations court decisions. Various studies show the results that there are problems in the implementation of industrial relations court decisions.

Previous studies showed the non-implementation of various industrial relations court decisions that have permanent legal force (*in kerachi*). The non-implementation of the verdict is certainly very detrimental to justice seekers because they are impeded from obtaining what they are entitled to as stated in the court's decision. This condition is certainly contrary to the principle of justice which is cheap, fast and low cost. Such matter is also not in line with the philosophical foundation of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, in which the Law is made to realize harmonious, dynamic and fair industrial relations in an optimal manner in accordance with the values of Pancasila.

Another problem that also concerns the author, is related to the recent developments in industrial relations cases marked by the issuance of the Supreme Court Circular Letter (SEMA) No. 4 of 2016. These developments relate to the emergence of industrial relations disputes between local staff and foreign representatives in Indonesia. The case is based on SEMA Number 4 of 2016 under the authority of the Industrial Relations Court. However, even though the absolute authority or competence of the court is clear based on the SEMA, in these cases there will be complexity of problems when it enters the stage or phase of the implementation of the decision. This complexity arises because in this case the implementation of the decision will be confronted with diplomatic immunity possessed by the representative of the foreign country. This condition raises the problem of the non-implementation of the decision of the PHI which has permanent legal force.

These conditions need to be improved in order to restore labor law to its essence, namely that the work law aims to implement social justice by providing workers with protection against employers' authority.¹

¹ Zaeni Asyhadie, *Hukum Kerja: Hukum Ketenagakerjaan Bidang Hubungan Kerja* (Jakarta: PT Rajagrafindo Persada, 2015), p. 15.

From the point of view of the theory of peace as a legal goal, the phenomenon shows the failure of achieving the goal of peace. Peter Mahmud Marzuki believes that the law must be able to create peace.² The goal to achieve peace can be realized if the law as much as possible provides a just arrangement, namely an arrangement in which there are interests that are protected equally, so that everyone gets what which is part of it. The theory of peace as a legal objective, does not emphasize the fulfillment of the aspects of order and order in society as the main objective of law. However, the theory strongly emphasizes that in a society, law must be able to avoid oppression from the strong against the weak.³ In this aspect of avoiding oppression, it can be said that the law on industrial relations dispute resolution is not in accordance with the theory of peace. The neglect of the rights of justice seekers who have obtained the verdict that has legal force, can be said as a form of oppression.

Court decisions that have permanent legal force are an important part of the judicial system. Failure to carry out this decision will damage the public's trust in the justice system. If mistrust of the justice system is not overcome, it can lead to legal dysfunction. According to Budiono Kusumohamidjojo, legal dysfunction is a condition where the role of law is not carried out or cannot be carried out to bring order to the behavior of citizens and the government.⁴

In the various results of the study, the authors see a discrepancy between the conditions expected by the presence of an industrial relations court established under Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes and the reality in society which shows the existence of justice seekers who in fact suffer from their rights because the decision of the industrial relations court which has permanent legal force is not implemented. Through this paper, the author wants to see what problems occur in terms of normative matters, so as to result in the non-implementation of industrial court decisions with permanent legal force. After knowing the problem from the normative point of view, the writer can recommend an idea to solve the

² Peter Mahmud Marzuki, *Pengantar Ilmu Hukum, Revised edition* (Jakarta: Kencana Prenada Media Group, 2013), p. 131.

³ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, p. 129.

⁴ Budiono Kusumohamidjojo, *Teori Hukum: Dilema antara Hukum dan Kekuasaan* (Bandung: Yrama Widya, 2016), p. 120.

problem normatively. The recommendations proposed are expected to help resolve the issue of non-enforceable decisions in industrial relations courts, so that justice seekers can be fulfilled their rights.

There are two problems that are the focus of this article. First, the problems are related to the non-implementation of PHI decisions that have permanent legal force and non-enforceable decisions of PHI that have permanent legal force which in their cases are disputes between local staff and representatives of foreign countries so that they conflict with diplomatic immunity. Thus, the two problems need to be done legal research in order to provide solutions to problems in accordance with the rules of legal science and legislation.

The study uses the method of normative legal research, namely research that studies positive law in terms of normative. Normative legal research methods, is a unique method in the science of law. This characteristic arises from the character of the science of law which is sui generis.⁵

Normative legal research needs to be carried out in order to overcome the problem of norm conflicts, void norms or vagueness of norms.⁶ The ultimate goal of normative legal research is to produce a prescription to address the legal problem or issue identified.⁷ This normative legal research uses primary and secondary legal materials as a source of research data.⁸ The primary legal materials used in this study are Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, Law Number 22 of 1957 concerning Settlement of Labor Disputes,⁹ and other related laws and regulations, as well as decisions of the relevant Constitutional Court. Secondary legal materials used in this study are various written publications that discuss industrial

⁵ Philipus M. Hadjon and Tatiek Sri Djatmiati, *Argumentasi Hukum* (Jogjakarta: Gajah Mada University Press, 2005), p. 1.

⁶ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum* (Jakarta: Kencana Prenada Media Group, 2016), p. 85.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum, Revised edition* (Jakarta: Kencana Prenada Media Group, 2014), p. 251.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, p. 181.

⁹ The use of Law Number 2 of 1957 concerning Settlement of Labor Disputes is related to the use of a historical approach in this study. Thus, a comparison is needed between the current Act and the Law it has replaced. In this paper specifically, what is compared is regarding the implementation of decisions that have permanent legal force in the old and new laws.

relations disputes especially relating to the aspects of implementing decisions. The approach used in this legal research is the statutory approach and the historical approach and case approach. The historical approach is used to compare the arrangements for implementing industrial or labor dispute decisions that have permanent legal force in the old law, namely Law Number 22 of 1957 concerning Settlement of Labor Disputes and the new law, namely Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. The case approach, in this study, was used to analyze the *ratio decidendi* in the Constitutional Court's decision related to industrial relations disputes.¹⁰

The Implementation of Industrial Relations Court Decisions

From the author's study of various research results, it can be seen that problems in the normative aspect that occur in the implementation of industrial relations court decisions is one of the reasons is due to the absence of norms. The void norms that can be identified include:

1. There are no sanctions against those who do not want to carry out industrial court decisions that have permanent legal force
2. There are no rules for limiting the duration of the implementation of decisions that have permanent legal force
3. There is no affirmation regarding the involvement of the labor inspection apparatus, to assist the implementation of the industrial relations court decision which has permanent legal force.

The absence of these norms makes the law unable to function to provide legal protection. Legal protection in principle is always given to groups of people who are in a weak position both in terms of juridical and non-juridical aspects.¹¹ Justice seekers whose industrial relations court decisions have permanent legal force but have not been implemented are clearly legally weak parties, thus requiring legal protection to ensure the exercise of their rights. In this case legal

¹⁰ *Ratio decidendi* are legal reasons used by the judge to arrive at his decision. See Peter Mahmud Marzuki, *Penelitian Hukum*, p. 158.

¹¹ Salim H. S. and Erlies Septiana Nurbani, *Penerapan Teori hukum pada penelitian tesis dan disertasi* (Jakarta: Raja Grafindo Persada, 2013), p. 259.

protection can be done by overcoming the void norms that have been identified.

With regard to the various problems of norms, the proposed ideas for legal reconstruction in the implementation of industrial relations decisions have permanent legal force. The rationale for the idea of reconstruction can be traced to several *decidendi* ratios and the ruling of the Constitutional Court Number: 67/PUU-XI/2013. The verdict of the Constitutional Court is actually a decision regarding the position of wages of workers/laborers and other rights of workers/laborers in bankruptcy cases. However, in the author's view some of the *decidendi* ratios of these decisions can be the rationale for the legal reconstruction that was conceived through this scientific paper. In the reading of the author there are several legal rules that appear in the ratio of *decidendi* and the ruling of the verdict, including the following:¹²

- (a). That labor regulations in the Act must fulfill the basic rights and protections for workers/laborers and at the same time must be able to create conditions conducive to business development.
- (b). Whereas in making legal policies, workers/laborers rights cannot be marginalized, but they must not interfere with the interests of other parties.
- (c). Whereas workers/laborers are socially economically weaker and inferior to employers and workers/laborers' rights are guaranteed by the 1945 Constitution, the Law must provide guarantees of protection for the fulfillment of these workers/laborers' rights.
- (d). That in the perspective of the state's objectives and provisions regarding constitutional rights, human interests in themselves and their lives must be a priority.
- (e). That for workers/laborers wages are a means to meet the needs of life for themselves and their families.
- (f). Whereas payment of workers' wages takes precedence over all types of creditors, including claims for separatist creditors, bills of state rights, auction offices and public bodies established by the Government.
- (g). Whereas payment of workers' rights other than wages takes precedence over all bills including bills of state rights, auction offices and public bodies established by the Government, except bills from separatist creditors.

¹² These legal principles are sourced from the ratio *decidendi* and the verdict on the decision of the Constitutional Court Number: 67/PUU-XI/2013, p. 39-46.

In the author's interpretation, these legal norms clearly show that the Indonesian state as reflected in its constitution provides specific legal protection for the fulfillment of workers' rights. It can also be interpreted that the protection of the fulfillment of workers/labor rights is a reflection of the ideals of Indonesian law. Legal ideals are ideas, intentions, inventions and thoughts regarding the law or perceptions about the meaning of law which in essence consist of elements of justice, usefulness and legal certainty.¹³ Legal ideals have a function as general principles that serve as guidelines, norms of criticism, and motivating factors in the administration of law (the formation, discovery and application of law) and legal behavior.¹⁴ Legal ideals have a function as general principles that serve as guidelines, norms of criticism, and motivating factors in the administration of law (the formation, discovery and application of law) and legal behavior.

Thus it needs to be emphasized that the Indonesian legal ideal is the rationale for the idea of legal reconstruction of the implementation of the 'in kracht' decision of the industrial relations court, especially as a manifestation of the protection of the fulfillment of workers/laborers' rights in relation to the 'in kracht' decision of the industrial relations court which is not done.

Proposed Ideas for Legal Reconstruction

Following are some proposed ideas for legal reconstruction, related to the implementation of the 'in kracht' ruling of the industrial relations court:

1. Use of forced agency bodies

The idea of using forced institutions is also raised in research conducted by the Research and Development Center for Law and Justice of the Indonesian Supreme Court,¹⁵ and in research conducted

¹³ Bernard Arief Sidharta, *Ilmu Hukum Indonesia: Upaya Pengembangan Ilmu Hukum Sistematis yang Responsif Terhadap Perubahan Masyarakat* (Yogyakarta: Genta Publishing, 2013), p. 96.

¹⁴ Bernard Arief Sidharta, *Ilmu Hukum Indonesia...*, p. 96.

¹⁵ Moch. Iqbal, Rita Herlina, Johannes Brata Wijaya, Sri Gilang Muhammad Sultan Rahma Putra, Magdalena, and Muhammad Zaky Albana, *Laporan Penelitian Dasar Kewenangan Dan Alasan-Alasan Penangguhan Eksekusi Putusan Perdata Khusus Pengadilan Hubungan Industrial Yang Berkekuatan Hukum Tetap* (Jakarta: Pusat Penelitian

by Yessiarie Silvanny Sibot.¹⁶ However, in the two studies not explained further about the mechanism of the use of forced agency in industrial relations disputes. Besides there is no more detailed explanation, the two studies still refer to the use of forced agency bodies as regulated in Supreme Court Regulation No. 1 of 2000 concerning Agency Forced Institutions.

The author agrees with the use of a forced agency as a coercive tool for the parties involved to be able to carry out industrial relations court decisions that have permanent legal force. However, the author does not agree if the agency forced agency that will be used in industrial relations disputes refers to the provisions of the Supreme Court Regulation No. 1 of 2000 concerning Agency Forced Institutions. The author's disagreement is based on the view that if using a forced body agency as stipulated in the Supreme Court Regulation No. 1 of 2000, it will be burdensome for workers/laborers acting as petitioners for forced enforcement. This is because in Article 9 paragraph 1, it is stated that costs for debtors who have bad intentions during the forced implementation of the body are the responsibility of the forced applicant. Workers/laborers who are forced body applicants will certainly not be able to bear the costs of the debtor or in this case the employer while enforcing the body. In the new Supreme Court regulation that was initiated, the provisions on forced body costs follow the provisions of the case costs as regulated in Act Number 2 of 2004 concerning Industrial Relations Dispute Settlement.

Other provisions that do not allow the forced enforcement of bodies in industrial relations disputes if they continue to refer to the Supreme Court Regulation No. 1 of 2000 are the provisions of article 4 which states that forced force can only be imposed on debtors in bad faith who have debts of at least IDR. 1,000,000,000,- (one billion rupiah). These provisions certainly make the enforceability of the body inaccessible by workers/laborers, because in general cases of industrial relations disputes are of value under these provisions. Of the two

dan Pembangunan Hukum dan Peradilan Balitbang Diklat Kumdil MA RI, 2016), p. 176.

¹⁶ Yessiarie Silvanny Sibot, *Pelaksanaan Putusan (Eksekusi) Perkara Perselisihan Hubungan Industrial dalam Perspektif Pekerja/Buruh (Studi Kasus di Pengadilan Hubungan Industrial Palangkaraya)*, Master thesis (Faculty of Law, Universitas Brawijaya, 2013), p. 26.

provisions in the Supreme Court Regulation number 1 of 2000 regarding the agency's forced institutions, it is clear that its use cannot be imposed on industrial relations disputes and if it is still forced to be used it will only repeat the victory on paper from the workers. The Supreme Court Regulation No. 1 of 2000 is clearly inadequate to provide legal protection for justice seekers in industrial relations courts that have obtained decisions of permanent legal force. As it is known that the element of legal protection is the existence or form or purpose of protection, the subject of law protected and the object of legal protection.¹⁷

Therefore the idea proposed by the author regarding the use of forced agency bodies is to establish a new Supreme Court Regulation, which specifically regulates the use of forced agency bodies in industrial relations disputes. The idea of enforcing a forced agency is in line with one of the principles in civil law, the principle of protection.¹⁸

Referring to the elements of legal protection, the establishment of a new Supreme Court Regulation which will later regulate the use of forced agency in industrial relations disputes needs to pay attention clearly to the characteristics of the parties who are the subject of legal protection, namely justice seekers in the court of relations industrial that has obtained a permanent legal decision. The form of statutory regulations in the form of Supreme Court regulations is the choice of the author, because the enforced implementation of the body is under the authority of the Supreme Court, in this case carried out by the Court Clerk on the orders of the Chief Justice based on the petition filed by the agency's forced petitioner. This can also be seen from the historical point of view, that initially the forced agency of this body was regulated in the HIR,¹⁹ then because it was considered to be contrary to human rights, and then this institution was abolished through the Supreme Court Circular Letter Number 2 of 1964 and Number 4 of 1975. Then because in fact, quite a lot of debtors who have bad faith in paying their debts, the forced institution of this agency is revived through

¹⁷ Salim H. S. and Erlies Septiana Nurbani, *Penerapan Teori hukum...*, p. 263.

¹⁸ Amir Ilyas and Muhammad Nursal, *Kumpulan Asas - Asas Hukum* (Jakarta: Rajawali Pers, 2016), p. 43.

¹⁹ HIR is an abbreviation of *Herzjen Indlandsch Reglement*, which is a civil and criminal procedure law. However, currently in practice only the civil procedural law is used because the criminal procedural law has been replaced with a Civil Procedure Code.

Supreme Court Regulation No. 1 of 2000.²⁰ From the historical trajectory, it is clear that the regulation of forced agency bodies is regulated directly by the Supreme Court through the products of the legislation under its authority. Based on these historical traces, the rationale for ideas, regulates forced institutions in cases of industrial relations disputes through Supreme Court regulations. Because it is in the realm of the authority of the Supreme Court, the making of Supreme Court regulations can be done faster than the process of changing the law. Thus the Supreme Court's regulations can be used while waiting for the process of changing the law so that it can more quickly overcome the problem of obstructing the implementation of industrial relations court decisions that have permanent legal force.

Another rationale can refer to the consideration of letter c of the Supreme Court Regulation No. 1 of 2009, which states that, "That the actions of the debtor who, the guarantor or the guarantor of the debt who do not fulfill their obligations to repay their debts, even though they are able to carry them out, are violation of human rights whose value is greater than the violation of human rights over the forced implementation of the body against the person concerned." From these considerations, then an analogy can be made, that those who do not carry out the industrial relations court decisions that have legal force even though they are capable, have also committed human rights violations. Especially since justice seekers in industrial relations courts generally come from workers/laborers, where income or wages are their only source of income. Of course, with such a rationale, it can be accepted the imposition of forced agency in industrial relations disputes in order to protect the rights of justice seekers.²¹

This Supreme Court Regulation must be prepared without ignoring the principle of balance with the parties. Concretely, the principle of balance is applied in a way, giving the opportunity for the defendant to force the body to object.²² Submitting an objection to a coercive body's

²⁰ This historical information is sourced from the consideration of the Supreme Court Regulation No. 1 of 2000 concerning Forced Institutions

²¹ The use of the term forced agency in this paper refers to the term used in Supreme Court Regulation No. 1 of 2000 concerning Agency Forced Institutions. The word 'institution' here does not refer to a particular form of organization, but rather a specific mechanism.

²² Based on the provisions of article 1 letter (a) of the Supreme Court Regulations, that forced force is an indirect forced effort by inserting a person with

action was filed with the respondent to the court president. The application process is also an attempt to determine whether the company is in a position to be able to carry out industrial relations court decisions that have permanent legal force. Therefore, there are no parties who feel that they have been treated arbitrarily, with the application of forced institutions in industrial disputes.

2. Involvement of labor inspectors in the implementation of industrial relations court decisions

Involvement of labor inspection apparatus. To be able to involve labor inspectors, this is done by including the issue of implementing industrial relations court decisions as the object of supervision. This effort can be done by revising Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement.

The involvement of the labor inspection apparatus is in line with the view that the function of the government in employment relations is to provide protection to workers and maintain the continuity of the production process.²³

Associated with the function of the government, the selection of labor inspection apparatus to be involved in this matter the authors consider more appropriate. The author's rationale is based on several things, namely: first, as a state apparatus given the authority to oversee the implementation of labor law, the labor inspector already has a good understanding of labor law and its problems. Second, because in taking action against a violation of labor law, the supervisor has stages. These stages are the educative preventive stage, the historical repressive stage and the judicial repressive stage.²⁴ In the author's view, these two things are more in line with the principle of a balance between protecting workers and maintaining the continuity of the production process. The involvement of the labor inspection apparatus can be made when the effort to implement a decision in accordance with the mechanism in the

bad intention in the State Detention House determined by the Court, to force the person to fulfill his obligations.

²³ Aloysius Uwiyono, Widodo Suryandono, Siti Hajati Hoesin and Melania Kiswandari, *Asas-asas hukum perburuhan* (Jakarta: Rajawali Pers, 2014), p. 72.

²⁴ Abdul Khakim, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia, Revised edition* (Bandung: Citra Aditya Bakti, 2014), p. 199.

procedural law cannot run properly or has passed the specified time limit.

3. *Imposing Sanctions*

In the theory of the formation of good laws according to L. Fuller, one of the things that must be avoided by a statutory regulation is that these regulations do not cause public obedience.²⁵ In terms of the problems examined in this paper, it is clear that L. Fuller's views can be referred to in assessing one of the weaknesses that needs to be criticized in Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. The law does not have coercive means so that decisions on industrial relations courts with legal force can be obeyed.

A coercive tool is a means to guarantee public compliance with a statutory regulation. Generally the means of enforcing public observance are in the form of both criminal and administrative sanctions. Another coercive tool commonly used is the licensing mechanism.

Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes does not regulate the existence of sanctions against parties who do not implement industrial court decisions that have permanent legal force. Thus the law does not cause public obedience, because there are no tools or means to enforce compliance. This is different from the provisions in Law number 22 of 1957 concerning Settlement of Labor Disputes, which in Article 26 includes sanctions for parties who do not carry out decisions on the settlement of labor disputes that have permanent legal force. The absence of norms regarding sanctions will certainly cause parties who have the bad faith not to carry out decisions that have the force of law and still not feel threatened by any means of pressure. Therefore, the norms of this norm need to be filled immediately by revising Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement. In the revision, non-compliance in carrying out industrial court decisions that have permanent legal force, can be sanctioned. Sanctions can be in the form of administrative sanctions and criminal sanctions.

Other sanctions that can be used in the context of civil law are the imposition of forced money (*dwangsom*). *Dwangsom*, has been known

²⁵ I Made Pasek Diantha, *Metodologi penelitian hukum normatif dalam justifikasi teori hukum* (Jakarta: Kencana Prenada Media Group, 2016), p. 120.

in civil law and in Indonesia the arrangements are in articles 606a and 606b Rv.^{26 27} If the dwangsom mechanism is to be applied in industrial relations disputes, it cannot be adopted directly from articles 606a and 606b Rv. The dwangsom mechanism regulated in Rv has limitations. The weakness contained in the provision of dwangsom is that it cannot be enforced in a judge's decision in the form of payment of a sum of money. Associated with the type of case in the industrial relations court, the provisions of dwangsom cannot be imposed on cases of disputes over rights, which in general, the decision is to order payment of a sum of money. Therefore, in the revision of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, special provisions regarding dwangsom must be applied in the case of industrial relations matters. In the author's view, the dwangsom mechanism in industrial relations disputes must also be applicable to rights dispute cases even though in its decision ordering payment of a sum of money. Thus the dwangsom aspect becomes one of the special procedural law in industrial relations disputes. The establishment of special procedural law is needed to be compatible with the characteristics of justice seekers in industrial relations courts. This is so that there is a guarantee for the implementation of the verdict in the Kracht of Industrial Relations Court.

However, confirmation must be given that sanctions received both administrative and criminal do not eliminate the obligation to pay for workers' rights that have been severed based on decisions of industrial relations courts that have permanent legal force. Regarding this idea, the writer draws inspiration from the provisions of Article 4 of Law Number 31 of 1999 concerning Eradication of Corruption, which

²⁶ Rv stands for *Reglement op de Burgerlijke rechtsvordering* or civil procedural law for Europeans. Referring to Soepomo's opinion, that with the removal of *Raad Justitie* and *Hoggerichtshof*, the Rv is no longer valid. However, in judicial practice some procedural law on Rv is still being referred and used, especially against unregulated matters and HIRs. See Sudikno Mertokusumo, *Hukum acara perdata Indonesia*, Yogyakarta: Universitas Atma Jaya Yogyakarta, 2010).

²⁷ Yusida Wahyu Rezki, Penerapan uang paksa (dwangsom) dalam putusan pengadilan tata usaha negara (studi kasus Putusan No. 44/G.TUN/2011/PTUN.JPR), Thesis (Faculty of Law, Hasanuddin University, 2014), p. 9, available on <http://repository.unhas.ac.id/bitstream/handle/123456789/9949/SKRIPSI%20LENGKAP%20ACARA-YUSIDA%20WAHYU%20REZKI.pdf?sequence=1>, accessed March 17, 2019.

stipulates that returning money from corruption does not eliminate the criminal charges of corruption. Nevertheless, the use of criminal and administrative sanctions must still be guided by the principle of balance and caution. This principle of balance and prudence is applied by qualifying the offense as a complaint offense. Qualification as a complaint offense provides the possibility of a peace effort before the criminal case reaches the trial stage. The peace effort referred to here is the willingness to implement the 'in kracht' ruling of the industrial relations court.

This sanction can be an alternative choice if it is implemented in conjunction with a forced agency. Aside from being an alternative, these sanctions can also be a substitute for forced agency. With the inclusion of sanctions in the revision of the law, the Supreme Court regulations governing the use of forced agency in industrial relations disputes can be revoked. Revocation does not mean eliminating legal protection for justice seekers in terms of guarantee the implementation of the decision. This is because the legal protection and coercive functions have been transferred to the sanction mechanism in the revision of the industrial relations dispute resolution law.

4. A time limit for the implementation of industrial relations court

With the additional mechanism of sanctions or forced bodies, it is necessary to give a time limit for the implementation of industrial relations court decisions that have permanent legal force. Time limitation is needed so that the implementation of the decision does not become protracted. With the time limitation, if the time limit for implementing the award has passed, the party that wins the case can make other efforts, namely the use of forced institutions or report to labor inspectors which can lead to the imposition of sanctions for those who do not want to carry out industrial court decisions. legally binding.

This time limit is needed to ensure that the process of resolving industrial relations disputes through the industrial relations court does not conflict with the principle of justice which is easy, fast and low cost. Thus the rights of justice seekers can be maintained. The deadline for implementing this decision with permanent legal force can be determined by revising Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.

With this, it is necessary to reiterate that the change in the legal mechanism for the implementation of the court decision on industrial relations which has permanent legal force normatively must be pursued by:

1. Formed a new Supreme Court Regulation specifically regulating forced institutions in industrial relations disputes.
2. To revise Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes so as to accommodate the following points:
 - a. Imposing sanctions for those who do not want to carry out the court decision on industrial relations that have permanent legal force
 - b. Giving a time limit for the implementation of industrial relations court decisions that have permanent legal force.
 - c. Involvement of the labor inspectorate apparatus, in assisting the implementation of industrial relations court decisions that have permanent legal force.

Conclusion

Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes has the disadvantage of the absence of legal norms governing sanctions in the case of implementing industrial relations court decisions that have permanent legal force. Thus it is necessary to do legal reconstruction by establishing a Supreme Court Regulation concerning the application of forced agency in industrial relations disputes, as well as making changes to Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. The reconstruction of the law is needed in order to fill the void of norms, in order to overcome the problem of not implementing an industrial court decision which has permanent legal force.

Bibliography

Constitutional Court Number: 67/PUU-XI/2013.

Diantha, I Made Pasek, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Jakarta: Kencana Prenada Media Group, 2016.

Diantha, I Made Pasek, *Metodologi penelitian hukum normatif dalam justifikasi teori hukum*, Jakarta: Kencana Prenada Media Group, 2016.

- H. S., Salim, and Erlies Septiana Nurbani, *Penerapan Teori hukum pada penelitian tesis dan disertasi*, Jakarta: Raja Grafindo Persada, 2013.
- Hadjon, Philipus M., and Tatiek Sri Djatmiati, *Argumentasi Hukum*, Jogjakarta: Gajah Mada University Press, 2005.
- Ilyas, Amir, and Muhammad Nursal, *Kumpulan Asas - Asas Hukum*, Jakarta: Rajawali Pers, 2016.
- Iqbal, Moch., Rita Herlina, Johannes Brata Wijaya, Sri Gilang Muhammad Sultan Rahma Putra, Magdalena, and Muhammad Zaky Albana, *Laporan Penelitian Dasar Kewenangan Dan Alasan-Alasan Penangguhan Eksekusi Putusan Perdata Khusus Pengadilan Hubungan Industrial Yang Berkekuatan Hukum Tetap*, Jakarta: Pusat Penelitian dan Pembangunan Hukum dan Peradilan Balitbang Diklat Kumdil MA RI, 2016.
- Khakim, Abdul, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia, Revised edition*, Bandung: Citra Aditya Bakti, 2014.
- Kusumohamodjojo, Budiono, *Teori Hukum: Dilema antara Hukum dan Kekuasaan*, Bandung: Yrama Widya, 2016.
- Marzuki, Peter Mahmud, *Penelitian Hukum, Revised edition*, Jakarta: Kencana Prenada Media Group, 2014.
- Marzuki, Peter Mahmud, *Pengantar Ilmu Hukum, Revised edition*, Jakarta: Kencana Prenada Media Group, 2013.
- Mertokusumo, Sudikno. *Hukum acara perdata Indonesia*, Yogyakarta: Universitas Atma Jaya Yogyakarta, 2010.
- Rezki, Yusida Wahyu, Penerapan uang paksa (dwangsom) dalam putusan pengadilan tata usaha negara (studi kasus Putusan No. 44/G.TUN/2011/PTUN.JPR), Thesis, Faculty of Law, Hasanuddin University, 2014, available on <http://repository.unhas.ac.id/bitstream/handle/123456789/9949/SKRIPSI%20LENGKAP%20ACARA-YUSIDA%20WAHYU%20REZKI.pdf?sequence=1>, accessed March 17, 2019.
- Sibot, Yessiarie Silvanny, *Pelaksanaan Putusan (Eksekusi) Perkara Perselisihan Hubungan Industrial dalam Perspektif Pekerja/Buruh (Studi Kasus di Pengadilan Hubungan Industrial Palangkaraya)*, Magister thesis, Faculty of Law, Universitas Brawijaya, 2013.
- Sidharta, Bernard Arief, *Ilmu Hukum Indonesia: Upaya Pengembangan Ilmu Hukum Sistematis yang Responsif Terhadap Perubahan Masyarakat*, Yogyakarta: Genta Publishing, 2013.