

EXECUTION OF DECISIONS OF THE INDUSTRIAL RELATIONS COURT WITH PERMANENT LEGAL FORCE (*INKRACHT*)

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Abstract

The research will discuss the execution of industrial relations court decisions with permanent legal force, aiming to reveal and analyze how the process of implementing industrial relations court decisions with permanent legal force and what factors hinder the execution of industrial relations court decisions with permanent legal force. This is a literature study using normative legal research. The data collected by library research, namely by the study of written information about the law that comes from various sources and is widely published and is needed in normative legal research. The findings highlight that the procedure for the execution of industrial relations court decisions that have permanent legal force has not been explicitly regulated in Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement. However, Industrial Relations Dispute Settlement confirms that the Industrial Relations Court applies procedural law applicable to civil procedural law within the General Courts as stated in Article 57 of Industrial Relations Dispute Settlement. The lack of good faith on the part of the losing party to voluntarily carry out their obligations as stated in the verdict is one of the factors impeding the execution of the Industrial Relations Court's decision, which has permanent legal force. In addition, it is difficult for the winning party, in this case the workers, to determine which company assets can be executed against the losing party, and the execution cost is too high for the court to issue an execution order.

Keywords: *Execution of Decision, Industrial Relations Court, Permanent Legal Force, Dispute Settlement, Good Faith*

1. INTRODUCTION

Disputes between employees and the employer are common in working relationships. Disputes between workers and companies that frequently occur involve Disputes on Termination of Employment (PHK). Many of these disputes are also resolved through deliberation (agreement) between the parties, in this case the workers and the company, and not a few are also resolved through institutions trial that reaches the trial in the industrial relations court. Disputes between employees and employers become a national political issue, particularly in the employment sector, as they recur year after year (Sudja'i & Mardikaningsih, 2021).

In accordance with Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes, if there is an industrial relations dispute between workers and the company, it must be resolved in a bipartite manner first between the parties through deliberation, and if that fails, it may proceed through mediation through an institution of mediation. Whenever the implementation carried by authorized agency and mediation are unsuccessful, the objecting party may file a lawsuit in accordance with the jurisdiction of the Industrial Relations Court.

The Industrial Relations Court is a special court housed within the General Court, and for the first time by law, an Industrial Relations Court has been established in each District/City Court located in each Provincial Capital whose jurisdiction encompasses the relevant Province. In accordance with Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes, the Industrial Relations Court has the authority to examine, hear, and rule on industrial relations disputes if the disputing parties attempt a settlement through the courts (PHI). The procedural law applicable to the industrial relations court is the civil procedural law applicable to the general court system, with the exception of those provisions specifically outlined in this statute. The Industrial Relations Court has the duty and authority to examine and decide cases at the first level involving disputes over rights, at the first and final levels involving disputes of interest, at the first level involving disputes over the termination of employment, and at the first and final levels involving disputes between trade unions within the same company.

Article 2 of Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes specifies the following types of industrial relations disputes: (a) rights disputes; (b) conflicts of interest; (c) disputes over termination of employment; and (d) disputes between trade unions/labor unions within a single company. The ideals of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes are conceptually very noble, which is to realize harmonious, dynamic, and fair industrial relations optimally based on values. This is in response to the increasing and increasingly complex problems of industrial relations disputes in the industrialization era. Pancasila, as well as the need for institutions and mechanisms for resolving industrial relations disputes in accordance with the principles of speed, accuracy, simplicity, equity, and affordability.

In a matter of fact, obtaining justice through the industrial relations court is not as simple as one might assume, as the application of civil procedural law proves to create new problems. A Court Decision is null and void if it is not implemented; consequently, the Judge's Decision has executive legal force, i.e. the authority to enforce the terms of the decision through the use of state instruments. As for what gives a judge's decision executive authority, it is the heading that reads "For the sake of Justice Based on God Almighty" (Muhammad, 2000). In principle, only decisions with permanent legal effect can be implemented (execution). A decision is said to have permanent legal force if it contains a form of permanent and definite legal relationship between the litigating parties, because the defendant (the losing party) must obey and fulfill the legal relationship (Harahap, 2007).

In Law No. 2 of 2004 regarding the Settlement of Industrial Relations Disputes, the procedural law and procedures for the execution of a court decision are not explicitly outlined. Article 57 of Law No. 2 of 2004 merely confirms that the Industrial Relations Court applies the civil procedural law applicable to the General Courts. There has been a lack of applicable law in this regard. There is no law that specifically regulates the execution of industrial relations court decisions with permanent legal force (*inkracht*), meaning that there is no law that governs the execution of industrial relations court decisions. Thus, when discussing execution rules, reference must be made to the laws and regulations contained in the *Herziene Inlandsch Reglemen* (HIR) or *Rechtsreglemen voor de Buitengewesten* (RBg).

The Industrial Relations Court Decision with permanent legal force (*inkracht*) can be continued in the execution phase if the losing party does not voluntarily carry out or fulfill the decision's terms. On the basis of an *inkracht* decision, the process of execution or

implementation of a decision with legal force can still be carried out if the winning party (applicant for execution) requests execution against the losing party (applicant for execution). To carry out the execution is not a simple task, and to carry out the execution of the Industrial Relations Court's decision requires a lengthy period of time and procedure. Numerous factors impede the implementation of the Industrial Relations Court's decision, including the lack of good faith from the executing respondent (company) to implement the decision voluntarily and the frequent use of flimsy excuses to delay the implementation of the decision, as well as the inability of the execution applicant (worker) to report what goods or assets of the executing respondent (company) will be executed (Clarke, 2012; Littlejohn, 2020; Tegnán & Isra, 2016).

Execution can be interpreted as carrying out or enforcing court orders with permanent legal effect (*inkracht*). If the losing party does not voluntarily fulfill its obligations as stated in the judgment, the procedure for enforcing the judgment is through the use of legal force. On the basis of a request from the execution applicant, the Industrial Relations Court of the District Court has the authority to carry out the execution of industrial relations court decisions.

On the basis of the aforementioned descriptions, the author is interested in discussing and researching more specifically in this paper how the process of Executing the Decision of the Industrial Relations Court with Permanent Legal Force (*Inkracht*) occurs in the Industrial Relations Court and what factors contribute to it. complication in the implementation of the decision.

2. RESEARCH METHOD

This study employs normative legal research with field data as supplementary information. In normative legal research, research is conducted by examining literature or utilizing secondary data which is a written data in the form of literature, reports, and scientific studies, to statutory regulations (Soekanto, 2006). Understanding the law, legal concepts, and legal principles pertinent to the issue at hand requires the discovery of ideas that give rise to comprehension (Asikin, 2004).

The approach method used in this research is the conceptual approach, the statute approach and the sociological approach. The technique used in this research is library research, namely the study of written information about the law that comes from various sources and is widely published and is needed in normative legal research (Abdulkadir, 2004).

3. RESULT AND DISCUSSION

3.1. Research Result

The Industrial Relations Court's examination of the case concludes with a decision, but the issue is not yet resolved by the decision. It is common for the losing party, in this case the company, to look for reasons to delay the implementation of the judge's decision. There are even some companies that do not want to carry out the judge's decision, necessitating court intervention to enforce it. The prevailing party may petition the court to execute the decision, and the court will do so by coercion (execution force).

In spite of the fact that the competent authority executes the judge's decision in accordance with the authority granted by the Court's chairman, not everything goes smoothly in practice. On the field, numerous obstacles arise during the process of implementing the decision's execution. The execution itself is not simple to carry out; therefore, it cannot be ruled out that there will be obstacles that prevent the execution from being carried out during its implementation.

According to Dr. H. Wildan Suyuthi, S.H., M.H., the process of execution, particularly in civil cases, is very taxing on the litigants in terms of time, effort, money, mental effort, and physical exertion. Decisions are meaningless if they only result in black-and-white outcomes. In order to achieve a victory that is close at hand, it is often necessary to undergo a lengthy process. This occurs because the execution frequently encounters numerous obstacles in practice. This is primarily because the losing party typically finds it difficult to accept defeat and tends to reject legally binding decisions in various ways. Therefore, the Chief Justice must sometimes "intervene" to expedite the execution (Suyuthi, 2004).

Law No. 2 of 2004 governing the Settlement of Industrial Relations Disputes governs the process of resolving labor disputes (hereinafter referred to as UUPPHI). Article 57 specifies that the procedural law applicable to the Industrial Relations Court is the civil procedural law applicable to the courts within the General Courts, with the exception of those provisions specifically outlined in this law. The procedure for carrying out court decisions (execution) is not governed by UUPPHI; therefore, the execution of industrial relations court decisions is governed by the Civil Procedure Law applicable to Courts within the General Courts, namely the provisions of the *Herzien Inlandsch Reglement* (HIR) and the *Rechtsreglement voor de Buitengewesten* (Rbg). Execution is governed by Articles 195 to 224 of the HIR or Articles 206 to 258 of the Rbg. However, not all provisions of the aforementioned articles are currently in effect. Specifically, Articles 195 to 208 of the HIR, Articles 206 to 240 of the Rbg, and Article 258 of the Rbg are still genuinely effective. The Dutch colonial government left in effect HIR and Rbg, which are civil procedural laws. HIR and Rbg are currently undergoing change as a result of the discussion of the Civil Procedure Law Draft (Maryono & Azhar, 2018).

The issuance of a decision by a judge of the Court of Justice regarding the contested matter is the most significant aspect and culmination of the final phase of proceedings before the Industrial Relations Court (PHI). In general, a judge's decision resolving a dispute always includes a ruling that one of the losing parties must voluntarily carry out the decision. In other words, if the judge's decision is not carried out voluntarily, the losing party will be compelled to carry out the judge's order (execution) (Erwin, 2015).

If the defendant (the respondent for execution) is unwilling to carry out the decision voluntarily, then the Head of the District Court in this case is the Head of the Industrial Relations Court.

As stated in Article 196 HIR or Article 209 RBg, the Chairperson of the Industrial Relations Court is required to issue a warning (*aanmaning*) or a warning to the executing party so that he is willing to implement the decision. (2) The chairman issued an order to summon the loser to appear before him and issue a warning so that he may implement the decision within the stipulated time limit of no more than 8 (eight) days (Hariyanto, 2019).

The Head of the District Court shall issue a warning, reprimand, or order against the execution defendant, after the execution applicant has made the request for execution. Unless preceded by a request for execution from the execution applicant, the District Court Chief may not issue a warning to the party whose execution has been requested. The plaintiff or a representative with special power of attorney submits the application for execution to the Head of the District Court, in this case the Head of the Industrial Relations Court. As soon as the Chairperson of the Industrial Relations Court receives the request for execution from the execution applicant, the Chairperson of the Industrial Relations Court shall summon the defendant (the respondent for execution) to be warned and simultaneously notify the time period given to the defendant (the defendant for execution) to fulfill its obligations in accordance with the judgment rendered by the Panel of Judges.

In the case of warning the defendant for execution, the Industrial Relations Court conducts incidental hearings attended by the Chair of the Industrial Relations Court, the Registrar, the Defendant (Execution Respondent), and the Plaintiff (Execution Petitioner), and the trial must be included as authentic evidence in the official report. This report serves as the basis for determining the order for the confiscation of execution if the execution defendant fails to fulfill his obligations to carry out the decision's terms. After the execution defendant has been issued a summons and a warning, the Chairman of the Industrial Relations Court will issue a decision to the Registrar and the Seizure Officer containing, among other things, an order to carry out a confiscation of execution against the execution defendant.

According to the preceding explanation, in order for the execution of a court order to be considered legally valid, several conditions must be satisfied. Conditions for a valid execution are as follows:

1) Warning (*Aanmaning*)

Warning is a basic condition of execution, because without warning execution cannot be executed. Warning becomes important related to the execution of the execution itself, whether it can be implemented or not. A new execution can be executed (as a concrete action) since the warning time has passed. A warning is an effort made by the Head of the District Court in the form of a warning to the defendant so that he carries out the decision voluntarily. The warning period given by law is maximum, which is a maximum of 8 (eight) days (Article 196 HIR/Article 207 RBg). This means that within eight days the defendant is asked to carry out the decision voluntarily.

2) There is an Execution Order

In accordance with the provisions of Article 196 paragraph (1) and Article 208 paragraph (1) RBg, an execution order is a letter of determination by the head of the PN addressed to the clerk or bailiff to carry out the execution. The PN chairman's order is in the form of a stipulation. This form of determination is imperative and may not be in oral form. Article 197 paragraph (1) / Article 208 paragraph (1) RBg explains that ex officio the head of the PN makes an order to carry out the execution and the order is by letter.

3) There is a Minutes of Execution

The minutes of execution are a formal requirement for the validity of the execution. The provisions on the minutes of execution, regulated in Article 197 paragraph (4) of HIR and Article 209 paragraph (4) of RBg, expressly instruct the official who carries out the

execution to make an official report of the execution. Therefore, without an execution report being made, the execution is considered invalid (Erwin, 2015).

The function of carrying out actual and physical executions is carried out by the Registrar or Bailiff while the function of the Chairperson of the Industrial Relations Court is to order executions and lead executions. In the division of execution functions, it does not mean that the Chairperson of the Industrial Relations Court is free from responsibility. Although the actual and physical execution is carried out by the Registrar and/or Bailiff, this function is only a delegation or delegated to him, but each has responsibilities and the Chairperson of the Industrial Relations Court is the most responsible. If there is a deviation in the execution, the responsibility remains with the Chairperson of the Industrial Relations Court. The order to carry out the execution must be through a letter of determination from the Chair of the Industrial Relations Court and is imperative in the sense that the Chairperson of the Industrial Relations Court may not issue a decision to carry out the execution verbally, it must be determined in writing. In the event that an official carries out an execution, he or she must make a report on the confiscation of execution because without the official report it is considered invalid. The formal validity of the execution can only be proven by an official report. As for what is listed in the minutes, including witnesses, who assist in the execution must also be included in the minutes.

Based on the description above, it is known that a warning or warning is an early stage of the execution process. The warning process is a formal requirement for all forms of execution, both in the form of real execution and execution of payment of a sum of money. If the warning call is not heeded by the defendant (the respondent for execution), then from that time the Chair of the Industrial Relations Court issues a letter of determination containing an order to the clerk or bailiff to carry out "execution confiscation" (*executorial beslag*) of the defendant's assets, in accordance with the terms and procedures regulated in Article 197 HIR or Article 208 RBg.

The order in the form of a letter of determination is a direct stage of physical execution in the field, with an execution order, the clerk or bailiff can immediately complete the actual execution. One thing that needs to be considered in the execution of confiscation is that the confiscated goods really belong to the confiscated or the defendant (the respondent for execution).

3.2. Factors Inhibiting the Execution of Industrial Relations Court Decisions

Barriers to execution do not imply delaying execution in general civil cases, such as the existence of *verzet*, *deden verzet*, etc. What is meant here is the impediment to the execution of the Industrial Relations Court Decision at the District Court, which has permanent legal force, as a result of the losing party's unwillingness to voluntarily fulfill its obligations as stated in the verdict. In addition, it is difficult for the winning party, in this case the workers, to determine which company assets can be executed against the losing party, and the execution cost is too high to execute the judgment by filing an execution request with the court. Related to execution costs, it is a common problem, both in terms of execution costs, down-payment of execution costs, and how to collect execution costs, as well as free executions based on Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes.

By referencing Article 121 paragraph (4) HIR or Article 145 paragraph (4) RBg, the Execution Applicant pays the execution fee in advance, as explained by M. Yahya Harahap

that as a down payment, and the replacement can only be billed to the defendant (executed) after the execution is complete. The obligation to prioritize payment of execution fees to the execution applicant is predicated on the understanding that execution fees are an integral component of court fees. If the execution fee is the same as the court fee, the provisions of Article 121 paragraph 1 HIR or Article 145 paragraph 4 RBg will fully apply to the payment of the execution fee (by analogy). In this article, it is emphasized that the clerk may only record the lawsuit in the register book if the plaintiff has made the initial payment of court fees. So long as the plaintiff has not paid the clerk-scheduled down payment:

- a. Claims may not be recorded in the register of claims (cases) and;
- b. At the same time, the lawsuit (case) cannot be tried.

From the provisions of Article 121 paragraph 4 HIR or Article 145 paragraph 4 RBg, the cost of the case must be paid first by the plaintiff. As long as the plaintiff has not paid the court fees, the lawsuit filed may not be registered, and at the same time is prohibited from being tried. Analogy to the provision if this provision is related to execution:

- a. Payment of execution fee must be paid in advance by the Execution Applicant (plaintiff);
- b. As long as the Execution Applicant (plaintiff) has not paid the execution fee in advance, the execution cannot be carried out (Harahap, 2007).

Based on the preceding explanation, it is common knowledge that implementing a court decision requires a lengthy procedure and significant costs, including warning fees, execution confiscation calls, auction fees, and newspaper announcement costs. This may result in execution delays due to the Petitioner's lack of budget, while the government's budget has not increased or decreased. As a result, this will create legal uncertainty for workers/laborers, who are the weaker party attempting to obtain their rights through execution. Hold a deliberation for workers who are economically optimistic about their right to receive a sum of money from the company, even though the Industrial Relations Court has ruled in their favor. This presents a dilemma for workers/laborers seeking justice before the law, as legal certainty does not necessarily guarantee that their rights will be respected by the entrepreneur/company that lost the case.

4. CONCLUSION

4.1. Conclusion

Based on the findings and discussion, it can be concluded that:

- 1) The execution of industrial relations court decisions that are legally binding (*inkracht*) is not regulated in Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement, so that the execution of industrial relations court decisions follows the Civil Procedure Code applicable to Courts within the General Courts namely those regulated in the *Herzien Inlandsch Reglement* (HIR) and *Rechtsreglement voor de Buitengewesten* (Rbg). In connection with the execution of the decision of the judge of the industrial relations court which has permanent legal force (*inkracht*), the authority to carry out the execution rests with the Chairperson of the Industrial Relations Court on the basis of a request for execution by the applicant for execution, the Chairperson of the Industrial Relations Court is obliged to give a warning (*aanmaning*) or reprimand to the

respondent for execution so that he is willing to carry out his obligations as ordered by the decision. In the case of carrying out the execution of a court decision, there are several conditions that must be met so that the execution is considered legally valid, namely the mandatory warning (*Aanmaning*), the existence of an execution order and all activities in the process of implementing the execution of the decision are stated in the minutes of execution.

- 2) The factors that hinder the execution of the Industrial Relations Court Decision which has permanent legal force (*inkracht*) are because there is no good faith on the part of the losing party to carry out their obligations voluntarily as stated in the verdict. In addition, the difficulty of the winning party, in this case the workers, is to find out what company assets can be executed as the losing party, and the next obstacle is related to the execution cost which is too expensive to carry out the execution by submitting an execution request to the court.

4.2. Suggestion

Several suggestions may be taken into account:

- 1) Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement (UUPPHI) still has many shortcomings in its regulation, especially regarding the procedure for carrying out the execution of industrial relations court decisions which have permanent legal force (*inkracht*), UUPPHI should regulate clearly and firmly in the execution of industrial relations court decisions that have permanent legal force (*inkracht*) in order to guarantee legal certainty for workers to seek justice.
- 2) It is hoped that in the future it will be possible to improve the laws and regulations regarding the settlement of industrial relations disputes in order to accommodate the problems that often arise in industrial relations disputes.
- 3) It is recommended that the Company as the Defendant or Execution Respondent is willing to carry out the decision voluntarily, so that the execution process of the decision does not have to take further legal action and the Company must obey the court's decision by providing fulfillment of the rights of employees as ordered by the decision.
- 4) There is a need for strict legal sanctions against companies/entrepreneurs as defendants or defendants for cassation who are not willing to carry out the decision voluntarily since the decision has permanent legal force, with the hope that the judicial process does not reach the level of the execution process.

REFERENCES

- Abdulkadir, M. (2004). *Hukum dan penelitian hukum*. PT. Citra Aditya Bakti, Bandung.
- Asikin, Z. (2004). Pengantar Metode Penelitian Hukum. *Jakarta: Raja Grafindo Persada*.
- Clarke, R. v. (2012). Opportunity makes the thief. Really? And so what? *Crime Science*, 1(1), 1–9.
- Erwin, Y. P. (2015). Kajian Yuridis Mengenai Pelaksanaan Eksekusi Dalam Pengadilan Hubungan Industrial (Juridical Study Of The Execution Of Industrial Relations Court). *Jurnal Legislasi Indonesia*, 12(4), 1–21.

- Harahap, M. Y. (2007). *Ruang lingkup permasalahan eksekusi bidang perdata*. Sinar Grafika.
- Hariyanto, A. W. W. (2019). Pelaksanaan Putusan (Eksekusi) Perkara Perselisihan Hubungan Industrial Terhadap Badan Usaha Commanditaire Vennootschap (Studi Putusan Mahkamah Agung Republik Indonesia Nomor 828k/Pdt.Sus-Phi/2016). *SOL JUSTICIA*, 2(2), 132–153.
- Littlejohn, C. (2020). Truth, knowledge, and the standard of proof in criminal law. *Synthese*, 197(12), 5253–5286.
- Maryono, D., & Azhar, M. (2018). Eksekusi Putusan Pengadilan Hubungan Industrial: Beberapa Catatan Masukan RUU Hukum Acara Perdata. *Administrative Law and Governance Journal*, 1(3), 345–350.
- Muhammad, A. (2000). *Hukum acara perdata Indonesia*. Citra Aditya Bakti.
- Soekanto, S. (2006). *Beberapa Masalah Hukum dalam Kerangka Pembangunan di Indonesia*. Jakarta: UI Press.
- Sudja'i, & Mardikaningsih, R. (2021). Correlation Of Worker Welfare And Industrial Relations. *CASHFLOW: Current Advanced Research On Sharia Finance And Economic Worldwide*, 1(1), 29–32.
- Suyuthi, W. (2004). *Sita dan eksekusi: praktek kejurusitaan pengadilan*. Tatanusa.
- Tegnan, G. G. H., & Isra, S. (2016). Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia. Available at SSRN 2836333.

