EFFECTIVENESS OF IMPLEMENTATION OF INTERLOCUTORY DECISIONS IN THE GRESIK STATE COURT/INDUSTRIAL RELATIONS CLASS I A

(Lawrence Friedman's Legal Effectiveness Theory Study)

Thesis

By:

Ananta Prayoga Hutama Syam

Student ID Number 16220042

SHARIA ECONOMIC LAW STUDY PROGRAM

SHARIA FACULTY

THE STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

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2020

STATEMENT OF THE AUTENTICITY

In the name of Allah SWT,

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

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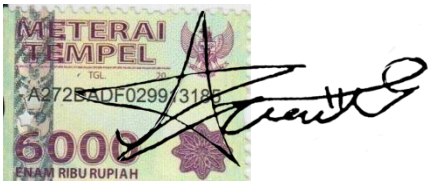
(Lawrence Friedman's Legal Effectiveness Theory Study)

Is truly the author's original work. It does not incorporate any material previously written or published by another percon. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang,1st November 2020

Author,



Ananta Prayoga H. S.

Student ID Number 16220042

APPROVAL SHEET

After examining and veriffing the thesis of Ananta Prayoga Hutama Syam, Student ID Number 16220042, Sharia Economic Law Study Program of Sharia Faculty of State Islamic University, Maulana Malik Ibrahim of Malang entitled:

EFFECTIVENESS OF IMPLEMENTATION OF INTERLOCUTORY DECISIONS IN THE GRESIK STATE COURT/INDUSTRIAL RELATIONS CLASS I A

(Study in Gresik District Court/Industrial Relations Class I A)

Has been declared passed with a grade: A

Dekan,

Prof. Dr. H. Saifullah, S.H., M.Hum
NIP. 196512052000031001

Malang, 04th May 2021

Scan For Verification

MOTTO

“Ayah dan Mama ketika tiada nanti tidak bisa memberi warisan berupa harta, hanya bisa mewariskan ilmu dan akhlak yang baik. Zaman sudah maju, dan hanya orang yang berilmu yang mampu bersaing di masa depan, karena itu Ata harus bisa jadi orang yang berilmu dan berakhlak. Itulah yang akan menjadi keunggulan dan harta berharga bagi Ata di masa mendatang”

“Father and Mother, when they are gone, cannot inherit you anything in the form of assets, they can only inherit you a good knowledge and morals. Times have advanced, and only knowledgeable people can compete in the future, therefore Ata must be able to be knowledgeable and mora personl. That will be Ata's advantage and valuable treasure in the future "

(My Father and My Mother, Muhammad Samsulhadi & Asliah Zainal)

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Bismillah hirrahmanirrahim

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In the name of Allah (Glory to Him, the Exalted), most gracious and most merciful. All praise to Allah for his grace and guidance, so this thesis entiled "**Effectiveness of sela's decision in article 96 law no. 2 of 2004 on the resolution of industrial relations disputes (Study in Gresik District Court/Industrial Relations Class I A)**" could be completed on time and expresses. *Shalawat* and *salaam* may deliver to the Prophet Muhammad (Peace Be Upon Him) who had brought us from the darkness into the brightness, in this life. May we be together with him *syafaa'at* in the day of Judgment. Aamiin.

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Malang, 1st November 2020

Author,

Ananta Prayoga Hutama Syam

Student ID Number 16220042

TRANSLITERATION GUIDANCE

A. General

The transliteration which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD (*Ejaan Yang Disempurnakan*). This useg is based on the Consensus Derictive (SKB) from the Religious Ministry, Education Ministry and the Culture Ministry of the Republic Indonesia, dated 22 January 1998, No.158/1987 and 0543.b/U/1987, which is also found in the Arabic Transliteration Guide Book, INIS Fellow 1992.

B. Consonants

Arabic	Latin	Arabic	Latin
ا	Unsigned	ض	Dl
ب	B	ط	Th
ت	T	ظ	Dh
ث	Ts	ع	‘ (comma facing up)
ج	J	غ	Gh
ح	H	ف	F
خ	Kh	ق	Q
د	D	ك	K
ذ	Dz	ل	L
ر	R	م	M
ز	Z	ن	N
س	S	و	W
ش	Sy	ه	H
ص	Sh	ي	Y

Hamzah (ء) which is usually represented by *alif*, when located on the beginning of of word, the transliteration follows the vocal and does not symbolized. However, when located on the middle or on the end of word, its symbolized by facing up coma (`), opposite to coma (‘) of the symbolize of “ع”.

C. Vocal, Long, and Diftong.

In every written Arabic text in the *latin* form, its vowels *fathah*is written with *"a"* ,*kasrah*with *"i",dhommah* with *"u",* whereas elongated vowelsare are written such as:

Vocal	Long	Diftong
a = fathah i = kasrah u = dlommah	Â î û	قال becomes qâla قيل becomes qîla دون becomes dûna

Especially for the pronouncing of *ya' nisbat* (in association), it cannot represented by *"i",* unless it is written as *"iy"* so as to represented the *ya' nisbat* at the end. The some goes for sound of a diftong, *wawu* and *ya'* after fathah it is written as *"aw"* da *"ay".* Study the following examples:

Diftong	Example
Diftong (aw) = ـو (ay) = ـي	قول becomes qawlun خير becomes khayrun

D. Ta' Marbûthah (ة)

Ta' marbûthah is transliterated as *"t"* if it is in the middle of word, but if it is *ta' marbuthah* in the end of word, then is it transliterated as *"h".* for example: الرسالة للمدرسة will be *alrisalat li al-mudarrisah*,or it shappens to be in the middle of a phrase which constitutes *mudlaf* and*mudlafilayh,* then the transliteration will be using *"t"* which is enjoined with the previous word, for example في رحمة الله becomes *fi rahmatillâh.*

E. Auxiliary Verb and *Lafadh al-jalalah*

Auxiliary verb *"al"*(ال) written with lowercase character, unless located on the beginning of sentence, while *"al"* in lafadh al-jalalah which located in the middle of two words or being or become idhafah is eliminated. Look at to the example:

1. Al-Imâm al-Bukhâriy says…
2. Al-Bukhâriy in*muqaddimah*of this book explains…
3. *Masyâ' Allâhkânawamâ lam yasya' lam yakun.*
4. *Billâh 'azzawajalla.*

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ABSTRACT

Ananta Prayoga Hutama Syam, 16220042, ***Effectiveness Of Sela's Decision In Gresik District Court/Industrial Relations Class I A (Lawrence Friedman's Legal Effectiveness Theory Study)***, Thesis, Sharia Economic Law Program Study, Sharia Faculty, State Islamic University of Maulana Malik Ibrahim Malang. Supervisor: Dr. Burhanuddin Susamto, S.HI., M.Hum.

Keywords: *Effectiveness, Interlocutory Verdict, Industrial Relations Disputes*

Disputes in the industrial sector, today not only create problems in case of settlement by judges, but also cause legal imbalances to law enforcers and society. The research objective is to discuss the effectiveness of the implementation of interlocutory decisions in the Gresik Class I A Industrial Relations Court, where there is a mismatch between the substance, namely the law regarding interlocutory decisions and the legal structure, namely law enforcers who are also legal communities in this case are judges.

This type of research is a juridical-empirical research using a case research and using legal effectiveness analysis.

The result of this research was that the ineffective interlocutory decision in Article 96 of the resolution of industrial relations disputes law at Industrial Relations Court Gresik is due, first, to the inconsistency of legal sources during the payment process wages, that is between the Constitutional Court and SEMA. Second, there is fear and doubt by the judge to fulfil the justice of the parties if when passing the interlocutory decision and fulfilling the workers' lawsuit, but in the final decision the employer is ultimately won. Third, there is no explanation for the evidentiary requirements for the delivery of the interlocutory decision in the resolution of industrial relations disputes Law which is different from the decision immediately in the District Court on Civil Law. The problems with interlocutory decisions will lead to imperfect application of the law, both in the aspects of the substance of the law, the structure of law enforcers, and the culture of society.

أنانتا برايوجا هوتاما سيام ، 16220042 ، **فاعلية القرارات التمهيدية في المادة 96 من القانون رقم 2 لسنة 2004 بشأن تسوية نزاعات العلاقات الصناعية (دراسات في محاكم المقاطعات / العلاقات الصناعية فئة A I)**، البحث شعبة حكم الإقتصادي الإسلامي، كلّيّة الشّريعة، جامعة الإسلامية الحكومية مولانا مالك إبراهيم مالنج.المشرف:الأستاذ برهان الدين الماجستير.

الكلمات المفتاحية: الفعالية ، القرارات العارضة ، منازعات العلاقات الصناعية

النزاعات في القطاع الصناعي ، لا تسبب حاليًا مشاكل في حلها من قبل القضاة فحسب ، بل تسبب أيضًا اختلالات قانونية لمنفذي القانون والمجتمع. الغرض من هذا البحث هو مناقشة فعالية تنفيذ القرارات العارضة في محكمة العلاقات الصناعية Gresik Class I A، حيث يوجد عدم تطابق في الجوهر ، أي القانون المتعلق بالقرارات العارضة وهيكلها القانوني ، أي جهات إنفاذ القانون الذين هم أيضًا كيانات قانونية. المجتمع في هذه الحالة هو القاضي.

نوع البحث المستخدم هو بحث تجريبي قانوني باستخدام بحث الحالة وتحليل الفعالية القانونية.

نتيجة هذا البحث هو أن القرار التمهيدي غير الفعال في المادة 96 من التسوية القانونية لنزاعات العلاقات الصناعية في محكمة غريسيك للعلاقات الصناعية سببه ، أولاً ، عدم تطابق المصادر القانونية في عملية دفع الأجور ، أي بين المحكمة الدستورية. و SEMA.ثانيًا ، هناك خوف وشك من قبل القاضي في تحقيق العدالة للأطراف إذا مر بالقرار التمهيدي واستيفاء دعوى العمل ، ولكن في القرار النهائي يفوز صاحب العمل. ثالثًا ، لا يوجد تفسير لمتطلبات الإثبات لتسليم قرار تمهيدي بشأن تسوية نزاعات العلاقات الصناعية ، على عكس القرارات المباشرة في محاكم المقاطعات فيما يتعلق بالقانون المدني. ستؤدي مشكلة القرار المؤقت إلى تطبيق غير كامل. القانون ، سواء من حيث المضمون القانوني ، وهيكل إنفاذ القانون ، وثقافة المجتمع.

ABSTRAK

Ananta Prayoga Hutama Syam, 16220042, ***Efektivitas Putusan Sela di Pengadilan Negeri/Hubungan Industrial Gresik Kelas I A (Kajian Teori Efektivitas Hukum Lawrence Friedman)***, Skripsi, Program Studi Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dr. Burhanuddin Susamto, S.HI., M.Hum.

Kata Kunci: *Efektivitas, Putusan Sela, Perselisihan Hubungan Industrial*

Perselisihan di bidang industri, saat ini tidak hanya menimbulkan masalah dalam penyelesaian atau putusan oleh hakim, tetapi juga menimbulkan ketimpangan hukum bagi penegak hukum dan masyarakat. Tujuan penelitian ini adalah untuk membahas efektifitas pelaksanaan putusan sela di Pengadilan Hubungan Industrial Gresik Kelas I A, dimana terdapat ketidaksesuaian substansi, yaitu undang-undang tentang putusan sela dan struktur hukumnya yaitu penegak hukum yang juga sebagai budaya hukum, dalam hal ini adalah hakim.

Jenis penelitian yang digunakan adalah penelitian yuridis empiris dengan menggunakan jenis penelitian kasus dan menggunakan analisis efektivitas hukum.

Hasil penelitian ini adalah bahwa tidak efektifnya putusan sela dalam Pasal 96 penyelesaian hukum perselisihan hubungan industrial di Pengadilan Hubungan Industrial Gresik disebabkan, pertama, ketidaksesuaian sumber hukum dalam proses pembayaran upah, yaitu antara Mahkamah Konstitusi. dan SEMA. Kedua, adanya ketakutan dan keraguan hakim untuk memenuhi keadilan para pihak jika dalam menjatuhkan putusan sela dan memenuhi gugatan buruh, namun dalam putusan akhir pada akhirnya pengusaha yang dimenangkan. Ketiga, persyaratan pembuktian untuk dijatuhkannya putusan sela dalam Undang-Undang Penyelesaian Perselisihan Hubungan Industrial tidak ada penjelasannya, berbeda dengan putusan sela di Pengadilan Negeri dalam Hukum Perdata. Permasalahan putusan sela akan berujung pada penerapan hukum yang tidak sempurna, baik dari aspek substansi hukum, struktur penegak hukum, dan budaya masyarakat hukum.

CHAPTER I

INTRODUCTION

A. Background of Research

Nowadays, disputes in the industrial sector are rife with the growth of various kinds of industrial businesses involving many parties, including companies, service providers, labor, etc. These disputes can be resolved through the Industrial Relations Court (IRC). The Industrial Relations Court is a special court that is within the domain of the general court, has the authority to examine, try and decide industrial relations dispute cases submitted to it. IRC is present in the midle of society, whose presence adds to the row of special courts that existed before, such as the Commercial Court, Human Rights Court (HAM), Corruption Crime Court (TIPIKOR), Fishery Court and so on.[1]

The implementation of the interlocutory decision in Article 96 of Law Number 2 of 2004 at the Industrial Relations Court, particularly the Gresik Class I A District Court/Industrial Relations, has never been applied in this Court. It was recorded that in the 2 years from 2017-2019 there were only two cases that filed a lawsuit to impose an interlocutory decision regarding

[1] Lilik Mulyadi, Agus Subroto, *Penyelesaian Perkara Pengadilan Hubungan Industrial Dalam Teori dan Praktik,* (Bandung: PT. Alumni, 2011), 7.

processing money, but all of these submissions were not granted.[2] From these data and facts, it can be concluded that the regulation regarding this interim decision cannot be implemented and does not protect the justice of the workers or laborers.

In this study, it is studied from the perspective of the theory of legal effectiveness by Lawrence, where the law is perfect if it fulfills three aspects, first is the substance of the law, namely the law, second is the structure, namely law enforcement officers, and third is culture, namely culture or society. law. However, in the implementation of the interlocutory decision at the Gresik District Court/Industrial Relations class IA, there is a discrepancy between the substance or the law which states that an interlocutory decision must have been rendered if the company does not pay wages and other rights to the workers/workers during the process of terminating the employment relationship with the employee. In other words, the company carries out its obligations, but on the other hand the legal structure is law enforcement officers who are also a culture or legal community, in this case the judge at the Gresik Industrial Relations Court cannot pass an interim decision or apply what is in the Act regarding Decisions. Interrupt. This discrepancy is what the researcher discusses, why there is a discrepancy between the substance and the structure as well as the legal community regarding the Law on Interlocutory Decisions.

[2] Information System for Case Tracing of the Gresik District Court, www.sipp.pn-gresik.go.id, accessed on July 14, 2019.

To see the problems in this research, several foundations are needed, including a philosophical, sosilogical, and juridical basis. In a philosophical aspect, the regulations regarding the interlocutory ruling in article 96 already contain values of justice or benefit for the parties, especially for workers/laborers, because in Article 96 the rights of workers/laborers are protected from injustice as stated in Article 96 paragraph (1) is an order for companies to pay wages and other rights to workers if the company does not carry out its obligations. Then from the sociological aspect, the regulations regarding this interlocutory decision even though philosophically already contain the values of justice and benefit, in fact in the field it cannot be implemented so that it cannot meet the needs of workers/laborers, in other words this regulation is profitable for the company and unfair for workers. As for the juridical aspect, the regulations regarding the interlocutory decision are not clear and do not guarantee legal certainty as well as public justice. Even though this regulation already regulates the interlocutory decision, in fact it cannot be implemented in the field. If the facts in the field, the interlocutory decision cannot be passed so that the rights of workers cannot be fulfilled, it is the same as the regulation regarding this interlocutory decision never existed. In addition, the Law on the resolution of industrial relations disputes and its explanation do not clearly state what conditions must be met so that the judge can issue the interim decision.

Departing from the above background, the researchers are interested to conduct research on the effectiveness of the interlocutory decision in Article 96 of Law No.2 of 2004 concerning the resolution of industrial relations

disputes at the Gresik Class I A District Court/Industrial Relations, where there is a mismatch between the legal substance, namely the regulations regarding this interlocutory decision which should have been imposed or implemented, but law enforcement officials as well as the legal community, namely judges at the Gresik District Court/Industrial Relations, cannot issue the interim decision and cannot implement it.

B. Problem Formulation

1. How is the effectiveness of the implementation of the interlocutory decision in the Gresik District Court/Industrial Relations Class I A from the perspective of Lawrence Friedman's legal effectiveness theory?
2. How is the effectiveness of the implementation of the interlocutory decision in the Gresik District Court/Industrial Relations Class I A from the perspective of Islamic law?

C. Objective of Research

1. To determine the effectiveness of the implementation of the interlocutory decision in the Gresik District Court/Industrial Relations Class I A from the perspective of Lawrence Friedman's legal effectiveness theory.
2. To find out the effectiveness of the implementation of the interlocutory decision in the Gresik District Court/Industrial Relations Class I A from the perspective of Islamic law.

D. Benefits of Research

This research is expected to provide benefits both theoretically and practically, as follows:

1. Theoretical Benefits

This research is expected to be used as study material for further research activities, as an effort to develop a more logical, systematic and rational concept of thinking. The results of this study are expected to be used as information for other researchers who will conduct similar research and contribute knowledge to students to deepen knowledge regarding the effectiveness of interlocutory decisions in Article 96 of Law Number 2 of 2004 concerning Industrial Relations Dispute Resolution in District Courts/Industrial Relations Gresik Class I A.

2. Practical Benefits

This research is expected to become a new discourse of thought that will complement existing thinking, so that the role of the industrial relations court in implementing interlocutory decisions can be maximally implemented, as well as gaining insight and experience in the effectiveness of interlocutory decisions in the Gresik Class I A District Court/Industrial Relations. According to Article 96 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.

E. Operational Definition

1. Implementation of The Interlocutory Decision

Implementation referred to in this study is the application or implementation of the interlocutory decisions in the Gresik District

Court/Industrial Relations Class IA carried out by the judges in these courts. Of course, this implementation or application is carried out during a trial regarding industrial relations disputes between the company and the workers/workers. While the interlocutory decision in question is a decision that is handed down before the final decision is held with the aim of guaranteeing the rights of the workers/laborers so that they can still be accepted during the trial or judicial process..

2. The Effectiveness of Lawrence Friedman's Law

According to Lawrence M. Friedman, that a law runs effectively and successfully is dependent on three elements of the legal system. Among others, namely; First, the legal structure, in this study concerns law enforcement officers, namely judges at the Gresik District Court/Industrial Relations Class I A. Second, the legal substance is the legislation regarding interim decisions, and finally the legal culture, namely the legal community in the District Court/Relations Court. Industrial Gresik Class IA, both judges and litigants. The three elements above are the determinants of whether or not a law is running. That is, if one of these elements cannot be fulfilled, then the legal system in a country can be said to be not functioning properly..

F. Discussion Structure

In order to make it easier to understand this research, the researcher describes the parts of the writing into five chapters consisting of:

Chapter I Introduction

This chapter describes the general conditions of the Gresik Class I A District Court/Industrial Relations, as well as this chapter is an introduction that contains the background of the problem, the formulation of the problem, the research objectives, the benefits of the research and describes the systematic discussion or writing.

Chapter II Review and Related Literature

This chapter contains juridical concepts as a theoretical foundation that is used as a source of reference in the process of analyzing any problems raised in the research. The theoretical framework used is: first, Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes historically, second is the history of the Gresik Industrial Relations Court, third, namely the meaning and types of interlocutory decisions, fourth is a review of Islamic law from al -Qur'an and the Prophet's Hadith related to the effectiveness of interlocutory decisions, and finally the theory of legal effectiveness.

Chapter III Research Method

This chapter describes the types of research. The type of research used by researchers in this study is juridical-empirical research. By using a case research approach (case approach). The location of the research was conducted at the Gresik Class I A District Court/Industrial Relations. There are two sources of data or legal materials, namely primary data and secondary data. Primary data is data obtained by researchers directly (first-hand), namely from interviews and observations, while secondary data is data obtained from documents such as written reports related to cases, laws, and

other literature sources. The data processing method in this empirical legal research is descriptive analysis.

Chapter IV Findings and Discussion

This chapter is the result of research and discussion. This chapter contains several points, namely: first, the general condition of the research object will be explained, namely the implementation of the interlocutory decision at the Gresik District Court/Industrial Relations Class I A. Second, the data will be presented from various sources, both from book references, regulations legislation, observations and interview data from judges, junior clerks, and the Head of the Gresik Class I District Court/Industrial Relations A. Third, regarding data analysis, at this point data analysis will be presented, namely by presenting a combination of data obtained from the results of research in the field with the theory used to analyze the data, both in terms of positive law and Islamic law.

Chapter V Conclusion and Suggestion

This chapter is the last chapter that concludes and suggests the research results. The conclusions presented by the researcher contain points which are the main points of the data that has been collected. This conclusion also contains the answers to the problem formulations that the researcher describes.

CHAPTER II

REVIEW AND RELATED LITERATURE

A. Previous Research

Based on the understanding and assessment of previous research, there are several previous studies which also examine the issue of interlocutory decisions. However, different substances were found with the problems that were the focus of this study.

Research conducted by Citra Sumawijaya, a student majoring in Law at the Law Faculty of Muhammadiyah University in Palembang in 2016 with the title: *"The Function of Interlocutory Verdict in the Process of Civil Case Examination"*. Based on the results of the study, it was concluded that the function of the interlocutory decision was to enable and facilitate the process of examining civil cases forward, and the civil cases that could be requested for an interlocutory decision were only on cases that required an on-site inspection, the decision of separation of several claims, provision and decision to prove by witness examination.[3]

Research conducted by Syahril, lecturer at the Faculty of Law, Muhammadiyah University of South Tapanuli Padangsidimpuan in 2014 with the title: "*Interlocutory Verdict Against Civil Cases in Padangsidimpuan District Court*". Based on the results of the study, it was concluded that the basis for the judge's consideration when giving an

[3] Citra Sumawijaya, "Fungsi Putusan Sela Dalam Proses Pemeriksaan Perkara Perdata", Thesis, (Palembang: Universitas Muhammadiyah Palembang, 2016), 41.

interlocutory decision was the existence of confusion of evidence submitted by the litigant and the problem of the object of the case when the plaintiffs had been examined and the interlocutory decision in the civil litigation process was a decision of a ruling the law and functions as an effort to uphold the authority of the Court.[4]

Table of 2.1 : Similarities and Differences of Previous Research

No.	Name	Title	Similarity	Difference
1.	Citra Sumawijaya	Function of Interim Decision in the Process of Civil Case Examination	Themed Interlocutory Decision	Using normative research methods and discussing functions and cases that can be requested by interim decision
2.	Syahril	Interlocutory Verdict Against Civil Cases in Padangsidimpuan District Court	Themed Interlocutory Decision I	Using normative research methods and discussing judges' considerations and obstacles in passing interim decisions

Compared with the previous two studies, although both focus on interim decisions, there are differences. The first study (Citra Sumawijaya) used the normative method of law and not the application of the law. While the second study (Syahril) also used the normative method although the location of the research was in the Padangsidimpuan District Court.

[4] Syahril, "Putusan Sela Terhadap Perkara Perdata Di Pengadilan Negeri Padangsidimpuan," *Jurnal Justisia*, Volume 1 Number 2 (April, 2014), 220.

This study uses an empirical method by focusing on the implementation of an interlocutory decision indicated by an imbalance in its application, especially in law enforcement and the legal community itself.

B. Theoretical Framework

1. Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes

The birth of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes is nothing but due to the current development which resulted in the ineffectiveness of the previous rules or laws. With the new law, a judicial institution was also created to support the implementation of the regulation. So the judiciary created specifically to deal with issues concerning industrial relations disputes, the judiciary is called the Industrial Relations Court (IRC).

As written in Article 24 and Article 25 of the 1945 Constitution, a court must be established based on the law. On the basis of what has been written above, if this law was originally named the Law on Settlement of Industrial Relations Disputes was changed to the Law on Industrial Relations Court. The Industrial Relations Court is a special court established within the District Court that has the duty and authority to examine, hear and give decisions on disputes concerning industrial relations.[5]

[5] Juanda Pangaribuan, and friends. *Catatan Akademik Rancangan Undang-Undang Pengadilan Hubungan Industrial*, (Central Jakarta: TURC (Trade Union Rights Centre), 2012), 2.

So theoretically, the specificity of the Industrial Relations Court can also be linked to the views or opinions of competent legal experts in their fields (labor law experts). Like Professor of labor from Germany, namely Karl Max and Hugo Sinzheimer, believes that relations in a job are power relations, then Karl Max and Hugo Sinzheimer said that labor law is a new discipline to reject the liberal assumption that employment contracts are the product of autonomous choice of the parties.[6]

Otto Kahn-Freund, one of the students of Hugo Sinzheimer also believes that the real purpose of labor legislation is to increase the freedom, pride and personality of workers both individually and collectively, and to help increase human emancipation.[7]

In labor there are principles, objectives and characteristics that are not the same as civil law in general. In labor law there is an imbalance of position between employers as superiors (superior) and workers or laborers as subordinates of employers (subordinate). Whereas in civil law the placement of relations between the parties applies equally, meaning that there is no difference in social status between employers and workers/laborers. On the basis of this, it is fair and reasonable if

[6] Juanda Pangaribuan, and friends. *Catatan Akademik Rancangan Undang-Undang Pengadilan Hubungan Industrial*, 1.
[7] Juanda Pangaribuan, and friends. *Catatan Akademik Rancangan Undang-Undang Pengadilan Hubungan Industrial*, 1.

the labor procedural law is made separately from the general civil procedural law unless used in certain cases.[8]

When viewed historically, the Industrial Relations Court was born from the reform of the enthusiasm of the workers who demanded the dissolution of the P4D/P4P (Panitia Penyelesaian Perselisihan Perburuhan Daerah/Pusat). This P4D/P4P was formed on the basis of Law Number 22 of 1957 concerning Settlement of Labor Disputes and Law Number 12 of 1964 concerning Termination of Employment in Private Enterprises, because it was considered to have failed in realizing a fair, appropriate, fast, and labor settlement system cheap. In addition, it is considered unable to accommodate developments that have occurred, takes a very long time to settle in other words, unlimited time period, the awarding of decisions which are mostly directed and pro towards employers, intervention from the government is also very strong, the system in personalization it can also be said that it is no longer democratic, it is also disable to accommodate the era of openness and democratization within the industrial sphere whose realization is manifested through the freedom of trade unions and recognition of the existence of individual workers/laborers rights, decisions issued by P4D/P4P it is said to be an object in a state administration court dispute (PTUN), because it takes a long time so that justice and legal certainty for the disputing parties

[8] Juanda Pangaribuan, and friends. *Catatan Akademik Rancangan Undang-Undang Pengadilan Hubungan Industrial*, 2.

(workers/laborers and employers) getting further. Therefore on the basis of the drafting of the Law on Industrial Relations Dispute Settlement and the Industrial Relations Court as an institutional form under the District Court and the Supreme Court. Although philosophically Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement is not specifically explained that IRC is a special court inside the District Court.[9]

Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes was passed on January 14, 2005 and was enforced under Government Regulation in Lieu of Law (PERPU) Number 1 of 2005 concerning Suspension for the Entry into force of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes (UUPPHI 2/2004). Then the existence of the IRC (Industrial Relations Court) began to be effective from January 14, 2005. In the consideration of the PERPU letter b determine:

> "That the implementation of this law requires an understanding and readiness of facilities, infrastructure, human resources, both within the government and judiciary."[10]

This is based on the General Explanation of PERPU further said that:

> "If Law Number 2 of 2004 is enforced at a specified time and there is no preparation from the institutions that handle industrial relations disputes, it will have an impact on the disruption of industrial relations which can negatively impact Indonesia's economic recovery efforts. This can happen because on the one

[9] Juanda Pangaribuan, and friends. *Catatan Akademik Rancangan Undang-Undang Pengadilan Hubungan Industrial*, 4.

[10] Mohammad Saleh, Lilik Mulyadi, *Seraut Wajah Pengadilan Hubungan Industrial Indonesia (Perspektif, Teoritis, Praktik, dan Permasalahannya),* (Bandung: PT. Citra Aditya Bakti, 2012), 1.

> hand the industrial relations settlement institution based on Law Number 2 of 2004 has not been able to carry out its duties and functions properly. However, on the other hand, the legal provisions that have been used as the basis for resolving industrial relations disputes regulated in Law Number 22 of 1957 concerning Settlement of Labor Disputes and Law Number 12 of 1964 concerning Termination of Employment in Private Enterprises is revoked with Law Number 2 of 2004. As a result the Central Labor Dispute Settlement Committee (P4P) and the Regional Labor Dispute Settlement Committee (P4D) no longer have the authority to settle the labor disputes in question."[11]

Apart from the explanation above, the issuance of Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes also intends to improve the formal labor law on the labor and the settlement mechanism in industrial relations disputes, which has the main objective of providing enlightenment in the realization of a fairness in the case of industrial relations disputes. Normatively, Law No. 2/2004 concerning Settlement of Industrial Relations Disputes aims to provide a protection for justice seekers in the field of industrial relations with a fair, precise, fast and inexpensive process.[12]

2. History of the Gresik Industrial Relations Court

Gresik Industrial Relations Court is a judicial institution that is still inside the Gresik District Court. The Industrial Relations Court was formed for one of the reasons, that is because in Gresik it is a densely industrial district. In general, the Industrial Relations Court is only in the provincial capital, but there are exceptions in East Java, that is the Industrial Relations Court in two places, both in Surabaya area (as the

[11] Mohammad Saleh, Lilik Mulyadi, *Seraut Wajah Pengadilan Hubungan Industrial Indonesia (Perspektif, Teoritis, Praktik, dan Permasalahannya),* 1.

[12] Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.

provincial capital) and the Industrial Relations Court inside the Gresik District Court Class I A.[13]

Previously the Gresik District Court and the Industrial Relations Court were not in one location, exactly the Industrial Relations Court was on Jalan Panglima Sudirman, but now it is at Jalan Permata Number 06 Gresik and one place with the Gresik District Court of Class I A.[14]

For the further details, the Gresik Industrial Relations Court was formed based on Presidential Decree (Keppres) No. 29 of 2011 concerning the Establishment of the Industrial Relations Court at the Gresik District Court. As explained before that in East Java IRC was formed at the Surabaya District Court in the Capital of East Java. In addition, because Gresik is an industrial-dense district, another reason is because the number of IRC cases in Gresik Regency is increasing so that it requires a fast, precise, fair, and inexpensive settlement time. This can be found in the Presidential Decree No. 29 of 2011 which reads:

> "(a) That the number of civil cases in the field of Industrial Relations in Gresik Regency is increasing so that the settlement needs to be done quickly, precisely, fairly, and cheaply. (b) According to the Article 59 paragraph (2) of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, an Industrial Relations Court is established in an industrial-dense area which is determined by a Presidential Decree."[15]

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[13] Information System for Case Tracing of the Gresik District Court, www.sipp.pn-gresik.go.id, accessed on July 14, 2019.

[14] Information System for Case Tracing of the Gresik District Court, www.sipp.pn-gresik.go.id, accessed on July 14, 2019.

[15] Presidential Decree of Republic of Indonesia Number 29 of 2011 concerning the Establishment of an Industrial Relations Court in the Gresik District Court.

So with the existence of a new Industrial Relations Court in one province, one of the mechanisms for the transfer of cases from the old court in Presidential Decree Number 29 of 2011 contained the rule that the Surabaya District Court no longer had the authority to handle a case in the jurisdiction of the Gresik District Court. But if a case has already been examined but has not been decided, the Industrial Relations Court and the Surabaya District Court still have the authority to take care of it (decide on the case). Furthermore, in Article 6 of Presidential Decree Number 29 of 2011 IRC cases that are included in the authority of the IRC of Gresik at the time the Presidential Decree is determined but have not been examined by the Surabaya PHI, then for the next process delegated to PN Gresik. However, it should be noted that the Industrial Relations Court in the Gresik District Court only has the authority to settle cases in the Gresik jurisdiction and IRC cases that occur in the Gresik Region cannot be handled at the IRC of Surabaya District Court.

As stated in Article 4 of Presidential Decree Number 29 of 2011 concerning the Establishment of the Industrial Relations Court in the Gresik District Court which reads:

> "With the establishment of the Industrial Relations Court at the Gresik District Court, the Gresik Regency was excluded from the jurisdiction of the Industrial Relations Court at the Surabaya District Court."[16]

[16] Presidential Decree of Republic of Indonesia Number 29 of 2011 concerning the Establishment of an Industrial Relations Court in the Gresik District Court.

3. Definition and Kinds of Interlocutory Decisions

Article 96 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes reads:

> "(1) If in the first trial, it is evident that the employer is proven to have not carried out his obligations as referred to in Article 155 paragraph (3) of Law Number 13 Year 2003 concerning Employment, the Chief Judge of the Session must immediately impose an Interlocutory Verdict in the order to the entrepreneur to pay wages with other rights commonly received by the worker/ laborer concerned.
> (2) The Interim Verdict referred to paragraph (1) can be handed down on the day of the second trial.
> (3) In the event that while examining the dispute is still ongoing and the Interim Verdict as referred to paragraph (1) is also not carried out by the entrepreneur/businessman, the Chief Judge of the Session shall order the Confiscate Collateral in Industrial Relations Court Establishment.
> (4) Interlocutory Decision as referred to paragraph (1) and Determination as referred to paragraph (2), resistance and/or legal remedies cannot be filed."[17]

In short, the Article 96 of Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes explains that if during the first trial (reading of the lawsuit) the employer is evidently proven not to pay wages as well as other rights of workers who have been subjected to suspension or that have been laid off by employers, then the Chief Judge of the Assembly is required to take action, which is to impose an Interim Decision which in the ruling gives an order to the employer to pay wages and other rights to workers.[18]

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[17] Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.
[18] Dela Feby, and friends. *Praktek Pengadilan Hubungan Industrial: Panduan Bagi Serakat Buruh*, (Jakarta: TURC (Trade Union Rights Centre), 2007), 21.

In KBBI, the term of interrupt, interim or interlocutory has the meaning "place (space) or between two objects (goods)."[19]

Interlocutory decisions in this case are included in the category of types of decisions handed down by judges based on Article 185 paragraph (1) HIR or Article 196 paragraph (1) Rbg. Meanwhile, interim decisions are included in the category of decisions that are not Final Decisions.[20]

Interlocutory, interim, interlocutorial vonnis, is a terminology from a decision handed down by a judge before deciding on the subject matter which has the intention to facilitate the continuation of the examination of a case. Interlocutory decisions can also be interpreted as decisions handed down by the Panel of Judges when in the middle of a trial or in the middle of a judicial process. The function of the Interlocutory Decision itself, among of others, is to guarantee the rights of workers/laborers to be accepted during the trial or judicial process. In practice, the Interlocutory Verdict is handed down after the Answer to the Lawsuit phase, although the interlocutory verdict can also be handed down at the end of the trial or more accurately with the final verdict.[21]

In this context the judge is not bound by an Interlocutory Award that has been handed down because of the result of an examination of

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[19] Kamus Besar Bahasa Indonesia Sela, https://kbbi.web.id/sela accessed on July 21, 2019.
[20] Mohammad Saleh, Lilik Mulyadi, *Seraut Wajah Pengadilan Hubungan Industrial Indonesia (Perspektif, Teoritis, Praktik, dan Permasalahannya)*, 224.
[21] Mohammad Saleh, Lilik Mulyadi, *Seraut Wajah Pengadilan Hubungan Industrial Indonesia (Perspektif, Teoritis, Praktik, dan Permasalahannya)*, 224.

industrial relations disputes, character of the interlocutory decision itself is temporary and not part of the final verdict (permanent decision). At the time of the implementation of awarding an interlocutory decision, the Chief Judge of the Session (Chairperson of the Tribunal) must pronounce the contents of the Interlocutory Decision in a trial open to the public and recorded by the Registrar in the minutes of the trial.[22]

Various Types of Interlocutory Decisions include:

a. Decision of the Presparator *(Presparatoir Vonnis)*

   Preparatory Decisions are decisions handed down by the Panel of Judges with the aim of preparing a case. The basic characteristic of this decision is that it does not affect the subject matter.

b. Interlocutor's Decision *(Interlocutoir Vonnis)*

   Interlocutor's Decision is a decision handed down by the Panel of Judges which contains a proof of order and can affect the subject matter.

c. Provisional Decisions (*Provisioneele Vonnis)*

   Provisionil Decision is a decision handed down by the Panel of Judges due to a relationship with the subject matter to determine a temporary measure in the interest of one of the litigants.

d. Incidental Decision (*Incidentele Vonnis)*

[22] Mohammad Saleh, Lilik Mulyadi, *Seraut Wajah Pengadilan Hubungan Industrial Indonesia (Perspektif, Teoritis, Praktik, dan Permasalahannya)*, 224.

Incidental Decision is a decision handed down by the Panel of Judges because of an "incident", which according to the system can be interpreted as an event that arises so as to delay the course of the case.[23]

In Article 86 of Law No. 2 of 2004 is explained, if when there is a dispute over rights or disputes on interests followed by disputes over termination of employment. Then the IRC, has the obligation to decide upon disputes over rights or disputes over interests by imposing Interim Decisions.[24]

4. Theory of Islamic Law Related to the Effectiveness of Intermittent Decision in Article 96 of Law No. 2 of 2004

In addition to discussing the meaning and various decisions made by a judge at an industrial relations dispute, in Islam it is also explained how a judge in taking and passing decisions is done on a fair and prudent basis.

Allah SWT. It says in Surat Annisa' Verse 135:

"O you who believe, be you who are the true enforcers of justice, be a witness because of Allah SWT. Even to yourself, or your parents and your relatives, if He is rich or poor, then God knows best its benefits. So do not follow Lust because you want to deviate from the truth. And

[23] Mohammad Saleh, Lilik Mulyadi, *Seraut Wajah Pengadilan Hubungan Industrial Indonesia (Perspektif, Teoritis, Praktik, dan Permasalahannya)*, 225.
[24] Dela Feby, and friends, *Praktek Pengadilan Hubungan Industrial: Panduan Bagi Serikat Buruh*, 21.

if you twist (words) or refuse to be a witness, then indeed Allah SWT. He knows best what you do."[25]

The Prophet (peace and blessings of Allah be upon him) said in the Hadith narrated by Imam Bukhari: "*O Man, know indeed the destruction of the previous ummah before you because when the thief is the "Visible Person" they leave the law (law is powerless to punish it), otherwise if the thief is from among "People", they strictly apply the punishment. By Allah SWT. If Fatimah Binti Muhammad (My own daughter) steals, "Definitely" I will cut off her hand "* (HR Imam Bukhari).

Fatwa of Caliph Umar Bin Khattab to Qadhi in Kufah "Abu Musa Al-Asy'ari". *Equate the position of the human being in your assembly, in your face, in your actions and in your Decisions, so that the rich do not consider "Your Unfair Justice", and the Poor and Weak "do not give up on your Decisions".*

Word of Allah SWT. In the Qur'an, the words of the Prophet SAW. In Al-Hadith and Fatwa Amirul Mukminin which is clearly stated above clearly explains the Rules of Law Enforcement in Islam and the Prophet SAW and his Companions have also given "*Uswah*" directly about the settlement of legal cases faced at the time .

[25] QS Annisa '(4): 135.

It is a very noble and intelligent Uswah for how a Judge should always uphold the values of Truth, Justice and Independence in carrying out his duties in resolving the cases tried. Because without the values of Truth, Justice and Independence, then the Professionalism of the Judiciary becomes a materialistic and pragmatic nuance, not a nuisance of the guardian and enforcement of justice for society.

If the values of materialism and pragmatism color the professionalism of judges, then the idea of a "Law-Based State" remains an ideal. If so, then the authority of the Court continues to decline and the state runs on the basis of power, therefore the challenge of the next judge is how to organize the institution and tradition of the Court that reflects the "Morals of the Prophet SAW" as a great role model in upholding justice and able to behave and uphold exemplified by Caliph Umar bin Khattab;

Why is the position of the judge to be very strategic and urgent and noble in Islam? And His Messenger is on Earth "and also digs into the values of law, especially Islamic law that lives in the midst of society.

When deciding matters, judges must be fair while still respecting human beings as a servant and Khalifatullah on earth, not as an object of law. Therefore, the judge should be "*Uswatun Hasanah*" (true, fair and independent judge model) as exemplified by the Prophet SAW, thus the image of the Court and the authority of the judge can be

improved, legal certainty can increase public and state trust the law is not on the basis of power.

In such a framework, the role of the judge becomes strategic, he not only digs for legal knowledge from Empirical experience and becomes a model judge who can be exemplified (*Uswah*) by society, but also as a reformer of the image of the judiciary and legal certainty for those seeking justice. He not only does his routine work of deciding matters, but also constantly performs theoretical reflections and empirical abstractions continuously so as to produce innovative "Ijtihad" in the development of law in this country we love.[26]

Judicial power is an independent power, regardless of the influence of the Government. Therefore it must be guaranteed by the Law on the position of the judge himself, his institution, with the aim that in carrying out his duties and functions in accordance with applicable law, the judge in accordance with the principle of Independent of judiciary must be independent and should not intervene from institutions moreover, by the government/authorities, this is regulated in the explanation of article 24 of the 1945 Constitution, and now in the amendment of article 24 paragraph (1) and in the main law of the judiciary.

[26] The Ideal Judge According to Islamic Glasses, www.komisiyudisial.go.id, accessed on August 27, 2020.

However, the power in question is not absolute power, so it justifies all means in deciding the things he handles. Faith control is the front guard that a judge must have as a control over his institutional duties while he is present and performing his functions as a judge.

A judge must have high moral integrity (personal integrity), in the form of honesty and good personality. In carrying out his duties a judge must be on the principles of Iman, Islam and Ihsan, because these three things are inseparable from each other, because from here was born the moral ethic to be a guide and a handle for himself; A person who has a strong faith will have a strong self-esteem and will not do things that are forbidden by religion, he will not be shaken by everything related to his profession. With the principle of Ihsan embedded in a judge means he will feel that everything he does is always under the supervision and supervision of Allah SWT. And this will bring a positive impact in his life, especially in carrying out his duties as a judge, by always feeling seen and monitored by Allah SWT. then he will never get out of control and by himself his behavior is always good, he will not do things that violate ethics let alone contrary to the law.[27]

Although the judge has high intellectuality and professionalism, but is not supported by good moral integrity as described above, then the intelligence and professionalism possessed by a judge will have no

[27] The Ideal Judge According to Islamic Glasses, www.komisiyudisial.go.id, accessed on August 27, 2020.

meaning, precisely with the intellectuality and professionalism he possesses will be made a tool for doing things that are not praiseworthy and against the law.

In this regard, the ethics of the profession of judges in which there is moral integrity is a tool to uphold the image, authority and dignity of Indonesian judges.

As for the basis of the other way of the judge in making the decision this time related to the proof for the parties to the case, is referring to a hadith that reads:

شرح قاعدة: البينة على المدعِي واليمين على مَن أنكر[28]

Meaning: *"Explanation of the rule: The evidence is for the plaintiff and the oath is for the defendant."*

معنى القاعدة:

إذا ادّعى مدّعٍ على آخرَ بحقّ بحضور الحاكم, والمدعَى عليه أنكر دعوي المدعِي, فالحاكم يطلب من المدعِي بيّنةً على دعواه, فإذا عجز عن إتيان البينة, يحلف المدعَى عليه.[29]

[28] Syarah Kaidah Evidence Against Plaintiff and Oath to Defendant, https://www.alukah.net/sharia/0/90741/ accessed on July 17, 2019.
[29] Syarah Kaidah Evidence Against Plaintiff and Oath to Defendant, https://www.alukah.net/sharia/0/90741/ accessed on July 17, 2019.

Meaning: *"Meaning of the rule: If a plaintiff sued another person before a judge, and the plaintiff wants the plaintiff's claim, then the judge demands the plaintiff to provide evidence on his lawsuit, if the evidence is weak then the plaintiff must swear."*

From the hadith and its explanation above it can be known, how a judge in applying the impeachment decision in an industrial relations dispute, a plaintiff if in one case asks a judge to overturn the decision in order to fulfill the rights of a plaintiff. So if in the first hearing the plaintiff states that he is right in his request, then he must show evidence to substantiate what he asked for in the lawsuit. And if the plaintiff has clearly violated or failed to fulfill what is the right of a plaintiff, then a judge must immediately drop a verdict. It is also in accordance with the explanation of the hadith is:

وقد قال صلّى الله عليه و سلّم: ((لو يعطى الناسُ بدعواهم, لادَّعَى رجال أموالَ قومٍودماءَهم, ولكن البينة على المدّعِي, واليمين على مَن أنكر))[30]

Meaning: *"And the Prophet Muhammad has said that: If a person has to give their charges, that person will demand blood and*

[30] Syarah Kaidah Evidence Against Plaintiff and Oath to Defendant, https://www.alukah.net/sharia/0/90741/ accessed on July 17, 2019.

human property, but the oath remains the property of the defendant. "

5. Legal Effectiveness Theory

The function of law enforcement itself is to uphold the justice and implementation of legal norms in a real manner of behavior and activities in daily life. According to Jimly Asshiddiqie, law enforcement can be divided into two perspectives, both is from the point of view of the subject and its object.

If viewed from the point of the subject, law enforcement itself can be carried out by a broad subject and can also be law enforcement itself carried out by the subject in a narrow or limited sense. In a broad sense, the law enforcement process can involve all legal objects in legal relations. Anyone who runs a normative rule or does something based on the norms or rules of law in regulations. In the narrow sense in terms of the subject, law enforcement can only be interpreted as an effort by certain law enforcement officials to guarantee and ensure that a rule of law is functioning as it should. In law enforcement, if necessary, law enforcement officials are allowed to use force.[31]

Law enforcement in terms of the object, that is law enforcement in terms of the law. In this case the same as law enforcement in terms of the subject matter, meaning that the meaning of law enforcement can include broad or narrow meanings. If in a broad sense the law

[31] Slamet Tri Wahyudi, "Problematika Penerapan Pidana Mati Dalam Konteks Penegakan Hukum Di Indonesia", *Journal of Law and Justice*, Volume I, Number 2 July 2012, ISSN 2303-3274, 216.

enforcement includes the values of justice contained in the law enforcement the sound of formal rules and the values of justice contained and live inside the community itself. However, in a narrow sense, law enforcement only concerns the enforcement of formal and written rules. In the term 'the rule of law' contained a meaning of government by law, it's just not included in the formal sense, but includes the values of justice contained in the law enforcement. While in the term 'the rule of law and not man', it means that in essence the government in a modern state of law is carried out by law, not by people. The opposite term is 'the rule by the law' which is meant as a government by people who use the law only as a instrument of power.

According to Lawrence M. Friedman, that a law runs effectively and successfully that is dependent on three elements of the legal system. As follows, first the legal structure, second legal substance, and then legal culture. The legal structure that concerns law enforcement officials, the substance of the law relates to the set of laws and regulations, while the legal culture involves living law or in other words referred to as the legal habits adopted in society.

The three structures above are those that support the determination of how a legal system works in a country. If in Indonesia, the legal structure can be categorized as a law enforcement institution, such as the attorney general's office or judiciary, court and police. Another aspect of a legal system is its substance. The substance of the law is the norms, rules, tangible patterns in human behavior within the

system itself. So the substance of the law concerns the applicable legislation and has a binding nature and becomes a guide for law enforcement officials. Legal culture that is related to legal habits or culture which is the nature of humans (in this case including the legal culture of law enforcement officials themselves) of the law and legal system. So no matter how good the structure of a law and how well the quality of the legal substance is designed and created but is not supported by how the culture or habits of the people involved in the system and society, then the law enforcement will not run effectively. For Lawrence, the three elements above are determinants of whether or not a law is running. That is, if one of these elements can not be fulfilled, then the legal system in a country can be said to not function properly.[32]

[32] Sescio Jimec Nainggolan, and friends. "Analisis Yuridis Penentuan Kedudukan Saksi Pelaku Sebagai Justice Colaborators Dalam Tindak Pidana Narkotika Di Pengadilan Negeri Pematang Siantar (Decision Study No:231/Pid.Sus/2015/PN Pms", *USU Law Journal*, Volume 5 Number 3 (October 2017), 109.

CHAPTER III

RESEARCH METHOD

According to Sugiyono, what is meant by research methods are scientific methods that aim to determine, develop and prove a science in order to obtain valid data results.[33] This research uses empirical legal research method which consists of several components including:

A. Type of Research

The type of research that researchers use is juridical-empirical research. Empirical research is the opinion and behavior of community members with the relationship of community life. While empirical law research more stressing on the process of functionalism, social movements and also on the effectiveness of law.[34] In this juridical-empirical research process, the researcher will face the relevant parties, there are several judges who are also the panel in the settlement of industrial relations cases in the District Court/Industrial Relations Gresik Class I A.

B. Research approach

In this study, researchers used several approaches, as follows the Case Approach (study case approach) by examining cases that have become court decisions, both district courts or religious courts, which have permanent legal

[33] Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R & D*, (Bandung: Alfabeta, 2013), 2.
[34] Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2011), 31.

force.[35] The case that is the focus of this study is the case of interim decisions made by Judges in the District Court/ Industrial Relations Court of Gresik Class I A.

C. Research Sites

The research location is a place that is chosen as a place to collect data needed in research. The research is located in the District Court/ Industrial Relations Gresik Class I A address at Jl. Permata Selatan No. 6, Kembangan, Gresik, Gresik Regency, East Java. The institution is a legal institution that can handle several cases including civil and criminal cases, both general and specific.

D. Data Sources

In this study researchers used two types of data sources as follows:

1. Primary Data

   What is meant by primary data in this study is data in the form of facts obtained directly from the field.[36] The data obtained was carried out by interviews with parties related to the object of research. The type of interviews conducted are direct interviews and semi-structured interviews. This means that researchers conduct interviews with questions in outline and can be developed.[37]

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[35] Guidelines for Writing 2015 Scientific Papers, Faculty of Sharia, Maulana Malik Ibrahim University, Malang, 21.

[36] Amiruddin, Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Grafindo Persada, 2010), 30.

[37] Lecture Notes, Research Methods by Dr. H. Mohammad Nur Yasin, S.H., M.Ag., (Sharia Business Law Department, Faculty of Sharia, UIN Malang, 6 March 2018).

2. Secondary data

What is meant by secondary data in this study is data obtained from other sources to support the primary data. The source of the data was obtained by the judge's case decision, case data that was tried by the court, especially the industrial law court, and other relevant data. Secondary data is also in the form of related laws, such as Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement.

E. Technique of data sources collection

Data collection techniques in this study were interviews, observation, and study of documents. Interviews are needed because this research requires a deep understanding through direct interaction with related parties called resource persons. In addition, it also made indirect observations or interviewees, in the sense that because when the Panel of Judges passed the interim decision, the researcher was not at the location. As for completing the interview and observation data, a document study is needed, that is the case report that is heard relating to industrial law, case registers, and other documents.

Interview is a process of interaction and communication. In this process the results of the interview are determined by several factors that influence. These factors include researchers as interviewers, resource persons, research topics and interview situations.[38] The interview technique used is

[38] Irwati Singarimbun, *Metode Penelitian Survai,* (Lembaga Penelitian, Pendidikan dan Penerangan Ekonomi dan Sosial), 192.

direct and semi-structured.[39] This means that researchers conduct interviews by providing questions in outline and/or can develop related to the research theme. In this case the researchers chose 4 speakers, among them:

1. Fransiskus Arkadeus Ruwe, S.H., M.H. as a Career Judge and Chairman of the Gresik Class I District Court/Industrial Relations A.
2. Lia Herawati, S.H., M.H. as a Career Judge certified of IRC.
3. Soebekti, S.H. as a Judge Adhoc of IRC from a trade union.
4. Hariyanto, S.H. as a Judge Adhoc of IRC from a trade union.

Interviews were also conducted with the Young Registrar, and the Head of Gresik District I Industrial Court/Class I A.

As for what is meant by the study of documents, define that the data collection techniques carried out through a study of documents that are relevant to the focus of this research.

F. Data processing method

In empirical legal research, data analysis used is descriptive analysis with the following steps.[40]

1. Editing, which is a re-examination of the results of recorded interviews with speakers. This means that the researcher summarizes in writing the results of the interview so that it is easy to analyze and then checks the

[39] Lexy J. Moleong, *Metode Penelitian Kualitatif*, (Bandung: Remaja Rosda Karya, 2006), 191.
[40] Abdul Kadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: Citra Aditya Bakti, 2004), 126.

suitability of the questions asked with the results of the interview or by adjusting the source of the law with some opinions from the speakers.

2. Classifying, means grouping the data that has been obtained. This means that researchers classify the interview data with the theory used to answer each problem statement.
3. Verifying, is checking the validity of the data obtained. This means that researchers re-examine the data with the aim to avoid further errors in data analysis.
4. Analyzing, namely the analysis of data sources. This means the researcher analyzes the data obtained from the results of the interview then relates it to theories that have been predetermined.
5. Concluding, namely determining the conclusions from various data sources. This means that the researcher explains the results of data collection and analysis that will be carried out in Chapter IV namely the discussion which will then proceed with drawing conclusions for the last chapter.

CHAPTER IV

FINDINGS AND DISCUSSION

A. Implementation of interlocutory decisions in District Courts/Class I A Industrial Relations

Decisions are art produced by judges in the world of justice. This art will be of extrinsic and intrinsic value when both parties and the general public are able to understand the contents of the verdict of a judge in relation to the case set out in writing.

Judging from the point of view of the decision, the form of decision is divided into interlocutory decisions and final decisions. The grouping refers to Article 185 paragraph (1) HIR (*Herzien Inlandsch Reglement*) and Article 196 paragraph (1) RBg (*Rechtreglement voor de Buitengewesten*). Interlocutory decisions are decisions handed down by judges while the case is still ongoing and require further examination to make it easier for judges to make final decisions.

Judging from Article 57 of the Law on the Settlement of Industrial Relations Disputes, the procedural law that applies in the Industrial Relations Court is generally the same as the civil procedural law commonly used in the General Courts, except for several provisions including:

1. The Industral Relations Court does not recognize the principle of *actor sequitur forum rei* (the lawsuit is submitted to the court where the defendant lives) and the principle of *forum rei sitae* (the lawsuit is

submitted to the court based on the location of the object of the dispute) but the lawsuit is filed at the Industrial Relations Court at the District Court in the jurisdiction of the place where the worker is located. / laborers work in accordance with Article 81 of the Law on the Settlement of Industrial Relations Disputes;

2. The panel of judges is not obliged to conduct mediation;
3. The disputing parties are not subject to court fees including execution costs if the claim value is below Rp. 150,000,000, - (one hundred and fifty million rupiah) in accordance with the provisions of Article 58 of the Law on the Settlement of Industrial Relations Disputes;
4. The panel of judges consists of one career judge, two Ad Hoc judges representing the trade / labor unions and employers' organizations;
5. The lawsuit must be accompanied by a minutes or written recommendation from the Manpower Office;
6. Intermediate decisions cannot be challenged;

In the industrial relations court procedural law, the clause related to the interlocutory decision is stated in Article 96 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes which reads:

(1) "If in the first trial, it is evident that the entrepreneur has not fulfilled its obligations as referred to in Article 155 paragraph (3) of Law Number 13 of 2003 concerning Manpower, the Chief Judge of the Session must immediately issue an Intermediate Decision in the form of an order for the entrepreneur to pay wages. along with other rights commonly received by the worker/laborer concerned.

(2) The Interval Verdict as referred to in paragraph (1) may be passed on the same trial day or on the second trial day.

(3) In the event that during the dispute examination is still ongoing and the Intermediate Decision as referred to in paragraph (1) is not carried out by the Entrepreneur, the Chief Judge of the Session orders Collateral Confiscation in an Industrial Relations Court Decision.

(4) Interval decisions as referred to in paragraph (1) and the determination as referred to in paragraph (2) cannot be challenged and / or legal remedies cannot be used.

The request for an interim verdict in the article above is submitted together with the material of the lawsuit. Fransiskus Arkadeus Ruwe as Chairman of the Gresik District Court / Industrial Relations stated that:[41]

"Requests for interlocutory rulings contained in the procedural law of the industrial relations court are preliminary charges, but not related to the subject matter of the case, they are called provisional demands, so the demands can be fulfilled before there is evidence. This demand is the same as the demand of *uitveorbaar bij voorraad*. "

A provisional decision is a demand that is decided not on the subject matter of the dispute.[42] The nature of the decision is essentially to facilitate the proceedings of the trial so that the demands filed by the plaintiff (laborer or worker) are different from the petitum contained in the subject of the lawsuit.

Meanwhile, the verdict *uitveorbaar bij voorraad* or in Indonesian is interpreted as a verdict immediately is a court decision that can be executed first (executorial) even though there has been no decision *in kracht* or objections from the opposing party. In this case the interlocutory decision referred to in Article 96 of the Law on the Settlement of Industrial

[41] Fransiskus Arkadeus Ruwe, *interview* (Gresik, 15 July 2019).
[42] M. Fauzan and Baharudin Siagian, *Kamus Hukum dan Yurisprudensi*, (Depok: Kencana, 2017), 881.

Relations Disputes is a type of immediate and provisional decision which is urgent and special in nature.

Wages are the basic rights of workers/laborers that are protected by the state, as stated in Article 27 paragraph (2) of the 1945 Constitution, namely that every citizen has the right to work and a decent living for humanity. The urgency of fulfilling wages as a worker's right is reaffirmed in Law Number 13 of 2003 concerning Manpower. Likewise, interlocutory decisions relating to workers wages that have not been paid by the employer during their absence (suspension) or in other terms are called process wages, are very urgent matters to be decided immediately by the panel of judges because they are closely related to a person's right to life and economy.

Subekti, one of the Ad Hoc Judges at the Gresik District Court/Industrial Relations explained that:[43]

"The act of suspension or workers being dismissed by the company is related to Article 155 of the Manpower Law. There, each party still has to carry out its obligations, and the company is obliged to pay wages to workers."

Suspension is a company effort to release workers/laborers from their obligations to do work during the termination process, while the company still has the obligation to pay for the rights of workers/laborers that it normally receives.

[43] Soebekti, *interview,* (Gresik, 10 July 2019)

As the author has explained above, the interlocutory decision in Article 96 of the Law on the Settlement of Industrial Relations Disputes contains urgent matters because it is directly related to the rights of workers/laborers so that granting the plaintiff's provisional demands is very reasonable and humane. However, theory is not as beautiful as practice in the field. Data shows that in the period 2017 to June 2019, the Gresik Class I A District Court/Industrial Relations which was formed in accordance with Presidential Decree Number 29 of 2011 concerning the Establishment of an Industrial Relations Court at the Gresik District Court only decided two cases related to Article 96. The following is a table of cases decided with regard to provisional demands:[44]

Table 4.1: List of Interlocutory Decisions Related to Provisional Claims for the Class I A Gresik District Court/Industrial Relations Year 2017– June 2019

No.	Case Number	Plaintiff	Defendant	Judgment Order
1.	36/Pdt.Sus-PHI/2017/PN.Gsk	Musta'in, and friends	PT. Raya Bumi Nusantara	Not granted
2.	6/Pdt.Sus-PHI/2018/PN.Gsk	Hera Fonda Ermada, and friends	PT. Putera Buana Foods	Not granted

[44] Information System for Case Tracing of the Gresik District Court, www.sipp.pn-gresik.go.id, accessed on July 14, 2019.

Judging from the table above, the panel of judges did not grant all claims for provisional fees submitted by the plaintiff. Of course this shows the ineffectiveness of the interlocutory decision in Article 96 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes in the Gresik District Court/Industrial Relations Class I A. Based on the theory of legal effectiveness put forward by Lawrence Friedman, a law will be effective when three aspects (legal substance, legal structure, and legal culture) are fulfilled. Seen from the aspect of legal substance, Article 96 of the Law on the Settlement of Industrial Relations Disputes is a form of protection for workers' rights which is generally also discussed on the basis of the state which, if associated with the community in the Gresik area as an industrial city, can be said to be harmonious and efficient. As for the aspect of legal structure and legal culture, the application of the law regarding interlocutory decisions is still not optimal.

B. Analysis and Discussion

1. Effectiveness of Interim Decision Implementation Perspective of Lawrence Friedman's Legal Effectiveness Theory

According to Lawrence M. Friedman, that a law runs effectively and successfully is dependent on three elements of the legal system. Among others, namely, the legal structure (legal structure), legal substance (legal substance), and legal culture (legal culture). The legal structure is related to law enforcement officers, the legal substance is

related to statutory instruments, while legal culture concerns living law or in other words referred to as legal habits adopted in society.

The three structures above are those that support the determination of how the legal system in a country works. The same applies to the rules for interim decisions at the Gresik District Court/Industrial Relations Class I A. The legal structure can be categorized in this study as law enforcement institutions, namely judges at the Gresik District Court/Industrial Relations Class I A. Another aspect of a legal system is its substance. . The legal substance in this case is in the form of rules regarding interim decisions contained in Article 96 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. Legal culture is related to customs or legal culture which is human nature (in this case including legal culture, namely from law enforcement officers themselves, namely judges at the Gresik District Court/Industrial Relations Class IA).

Therefore, in this study, In this research, several reasons or problems that make the interlocutory decision in Article 96 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes at the Gresik Class I A District Court/Industrial Relations are explained not effectively, due to several things including:

a. Legal Substance

1) Inconsistency of Legal Sources in the Process of Wage Payment Period Process

wages are regulated in Article 155 paragraph (2) of Law Number 13 of 2003 concerning Manpower which states that employers and workers must continue to exercise their rights and obligations until there is a stipulation from the Industrial Relations Settlement Institution. This is reinforced by the ruling of the Constitutional Court Decision Number 37/PUU-IX/2011 which explains that the process fee must still be paid until the parties obtain a final legally bindinng decision.[45]

In contrast to the Constitutional Court Decision that Supreme Court which issued SEMA (Supreme Court Circular) Number 3 of 2015 concerning Notification of the Formulation of the Results of the 2015 Supreme Court Chamber Plenary Meeting, in the section of the special civil room letter (f), stipulates that the payment of processing wages is a maximum of 6 (six) month.[46]

Meanwhile, if follow the Constitutional Court decision Number 37/PUU-IX/2011 which states that the payment of process wages is until the parties get a final legally binding decision, the employer or company feels unfair because it will take a lot of money and time from the entrepreneur. In terms of

[45] Constitutional Court Decision Number 37/PUU-IX/2011 concerning Judicial Review of Article 155 paragraph (2) of Law Number 13 Year 2003 Against the 1945 Constitution for Employers and Workers.

[46] Indonesia, Supreme Court Circular Number 3 of 2015 concerning Notification of the Results of the 2015 Supreme Court Chamber Plenary Meeting, special civil room, manpower sector, letter (f).

costs, employers have to pay processing fees for a long period of time until there is a permanent legal decision, whereas in court proceedings regarding cases of dismissal (Termination of Employment) it can take 1.5 to 2 years if an appeal is made. Meanwhile, in terms of time, the entrepreneur will feel disadvantaged because the legal process has been suspended for quite a long time. Apart from that, there are also questions that could be a problem for entrepreneurs, including:[47]

1) What about employees who have worked at other places before the decision is legally enforceable, are they still entitled to receive processing fees or wages during suspension?

2) What if the cassation legal remedy is used as a trick by employees to keep receiving wages without having to work?

3) How to calculate severance pay, reward for years of service and compensation for rights? Does it follow the period of service until the decision is legally binding?

If you follow the rules or provisions of SEMA (Supreme Court Circular) Number 3 of 2015 which states that the payment of processing wages is a maximum of 6 months, the judges at the Gresik Class I A District Court/Industrial

[47] Legal Problem for Post Process Wages of the Constitutional Court Decision, https://www.fardalaw.com/id/2018/11/04/problem-hukum-upah-proses-pasca-putusan-mk/, accessed on August 21, 2020.

Relations do not follow these rules, Haryanto is of the opinion that:[48]

> "Some of us (judges) continue to use the laws and decisions of the Constitutional Court. Even though the industrial relations court in the district court is part of the internal Supreme Court (MA), the law has a higher position than SEMA. "

In order to reduce the inconsistency between the interpretation of the payment process period between SEMA and the Constitutional Court's decision, the following steps are necessary, including: First, revocation or at least revision of Article 16 Kepmenakertrans No.KEP-150/MEN/2000 so that there is no conflict with the interpretation of the provisions of Article 155 paragraph (2) of Law no. 13 of 2003 after the issuance of the Constitutional Court Decision. Second is the making of clear regulations regarding the amount of process wages during layoffs until they have permanent legal force so as to create a sense of justice for both the company and the workers/laborers. The third is to revise Law Number 13 of 2003 which is not only to harmonize the provisions of Article 155 paragraph (2) of Law no. 13 of 2003 but also the provisions in other articles with the decisions of the Constitutional Court.[49]

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[48] Haryanto, *interview,* (Gresik, 10 July 2019)

[49] Conflict of Interpretation of the Meaning of Article 155 Paragraph (2) of the Manpower Law, https://business-law.binus.ac.id/2014/01/17/benturan-tafsir-tentang-mlasi-pasal-155-ayat-2-uu-ketenagakerjaan/, accessed 21 August 21, 2020.

b. Legal Structure

1) Judge's Fear and Doubt to Fulfill the Justice of the Parties in Imposing Interlocutory Decisions

In Article 96 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, it is explained that interlocutory decisions have no legal remedy, so their nature must be implemented. The question arises if when the panel of judges grants the plaintiff's provisional demands and punishes the company to pay a certain amount of wages to the workers/laborers, but when proving it, the panel of judges finds that there are deviations from the Plaintiff (worker/laborer). So that in the final decision, the panel of judges wins the company, can the panel of judges return the wages paid by the employer?

The judiciary is a problem-solving institution, therefore the panel of judges should not cause new problems between the parties. This question concludes that in making decisions, the panel of judges must be careful in making decisions immediately or provisionil decisions.

In order to avoid the emergence of new problems, the Supreme Court issued Supreme Court Circular Letter Number 3 of 2000 concerning the Immediately Decisions (*Uitvoerbaar Bij Voorraad*) and Provisionil. In addition, the Supreme Court Circular Letter Number 4 of 2001 concerning the problem of

Immediately Decisions (*Uitvoerbaar Bij Voorraad*) and Provisionil which emphasized that:[50]

"There is a guarantee that is same as the value of the goods/object of execution so that it does not cause harm to the other party. it will be different if it turns out that a decision will be handed down in the future which cancels the verdict of the First Level Court."

Imposition of an immediate and provisionary decision is indeed a legal matter as long as it complies with the provisions of Article 180 paragraph (1) of the HIR jo. Article 191 paragraph (1) RBg jo. Article 332 Rv. According to Lia Herawati:[51]

"As long as I have been a career judge in this court, rarely even tend to have an immediate decision or a provisional decision that is granted because the decision must meet the provisions of SEMA Number 3 of 2000 and SEMA Number 3 of 2001."

Based on the description above, the Gresik Class I A District Court/Industrial Relations have never granted the interlocutory decision as stipulated in Article 96 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.

On the other hand, if the interlocutory decision cannot or has never been implemented, the worker/laborer will feel disadvantaged and unfair because wages are an important

[50] Supreme Court, Association of Supreme Court Circular Letters (SEMA) and Supreme Court Regulations (PERMA) of the Republic of Indonesia 2000-2014, (Jakarta: Supreme Court of the Republic of Indonesia, 2014), 17-18.
[51] Lia Herawati, *interview*, (Gresik, 12 July 2019)

matter for the worker/laborer, even if the decision regarding the payment of process wages is passed in the final decision, then it is not equal to the costs used by workers during the trial process, even if the worker wins in the trial process, on the other hand, if the company wins the trial at the end of the trial, the worker will feel more disadvantaged and will not get justice, including the rights that workers should get.[52]

In addition, the possibility that is obtained is that during the termination process, workers/laborers have not yet found new jobs. Moreover, in accordance with the provisions of SEMA Number 3 of 2000 and SEMA Number 4 of 2001 which states that in order to carry out an execution, a decision must automatically be given a guarantee equal to the object of execution, then where is the money or guarantee that must be obtained by the worker/laborer? if in these situations, of course, the worker/laborer is still in the process of layoffs. This of course raises problems as a result of the provisions of SEMA Number 3 of 2000 and SEMA Number 4 of 2001. Because of that, Judges at the Gresik District Court/Industrial Relations are hesitant or don't have the courage to make immadiate decisions.

[52] Yolanda Pracelia, Andari Yurikosari. "Analysis of Interlocutory Decisions on Applications for Process Wage Payment in the Industrial Relations Court (Study of Decision No. 181/Pdt.Sus-PHI/2016/PN.Bdg jo Decision No. 82/Pdt.Sus-PHI/2016/PN.Bdg)", *Adigama Legal Journal*, 13.

Normatively, judges in industrial relations courts can make interlocutory or immediate decisions, but in fact, there has never been an interlocutory decision to punish employers from paying the processing wages imposed in the first trial, let alone until the judge ordered confiscation of guarantees. Therefore, these decisions are rarely applied, and it takes a judge with a conscience to implement them.[53]

c. Legal Culture

1) Evidence Requirements For the imposition of an interlocutory decision in the Law on the Settlement of Industrial Relations Disputes

According to Article 180 paragraph (1) HIR/Article 191 paragraph (1) RBg, one of the conditions for an immediate decision (*uitvoerbaar bij voorraad*) is a valid letter (authentic), a written letter (under hand) which according to the applicable regulations can be accepted as evidence.[54]

As for the proceedings at the Industrial Relations Court, the authentic evidence is a suspension letter. Whereas in practice, many companies do layoffs that are not in accordance with

[53] Dian Ferricha. "The Existence of Civil Procedural Law in Settling Rights Disputes on Wages for Honorary Workers in Indonesia", *Journal of Civil Procedure Law Adhaper*, Vol. 4 No.2 (July-December, 2018), 86.

[54] Gregorius Yoga Bramantyo, Harjono. "Terms of Giving Guarantee on Decision and Merta", *Journal of Verstek*, Vol.6 No.1, 89.

procedures, namely not providing suspension letters to workers/laborers who are in the process of layoffs, and layoffs that are carried out only verbally, so it is difficult to find evidence of suspension letters in cases of dismissal disputes.[55]

Evidence in industrial relations disputes must be distinguished from evidence in the Civil Procedure Code, because workers find it difficult to prove a suspension letter, even though it is often the case that the company does not provide a suspension letter in the process of layoffs. Referring to the Law on the Settlement of Industrial Relations Disputes, that if the company does not pay wages to workers, of course this indicates bad faith from the company. Then, not only just pay attention to formal evidence but also focus on existing conditions.

In Article 91 paragraph (1) of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, it has been explained that judges can be more active in the process of evidence in court, this is contrary to the principle of "*who argues he must prove*". Therefore, the judge should be able to order any party to show documents, letters or other evidence, not only in the suspension letter, but also like, the account book of workers/laborers should be considered by the judge in the

[55] Yolanda Pracelia, Andari Yurikosari. "Process in the Industrial Relations Court", 18.

evidence in court. Another breakthrough to overcome this problem of proof is in Article 108 of the Law on the Settlement of Industrial Relations Disputes which states that: "The *Chief Justice of the Industrial Relations Court can issue a verdict that can be implemented first, even though the verdict is filed with opposition or cassation.*"[56]

According to SEMA No. 4 of 2001, the condition for an immediate decision is that the applicant for execution is required to pay a security deposit or guarantee which is equal to the value of the goods/object of execution so as not to cause losses to other parties. If this rule is further examined, that even though the applicant for execution, is the worker/laborer is required to pay a security deposit which is the same value as the object of execution so as not to cause harm to other parties, the worker will certainly feel more disadvantaged, because in this situation the worker who requesting an immediate decision so that the judge orders the company to pay the processing fee, of course the worker cannot pay this money because the worker is in the process of layoffs and does not have a principal income unless it comes from the company where the worker works.

[56] Dian Ferricha. "The Existence of Civil Procedural Law in Resolving Rights Disputes on Wages for Honorary Workers in Indonesia", 87.

Beside of that, according to Mrs. Sri Widiyastuti, explaining the SEMA rules which oblige the applicant for execution to pay a guarantee equal to the object of execution, that the guarantee requirements in the decision are automatically only facultative, that is, the guarantee is not absolute. Without a guarantee, the decision can automatically be executed for execution if the conditions in Article 180 paragraph (1) HIR and SEMA Number 3 of 2000 are fulfilled. The basis for this consideration is Article 55 Rv which regulates the permissibility of implementing decisions that are carried out earlier without certain guarantees.[57]

Article 108 of the Law on the Settlement of Industrial Relations Disputes, which states that the Chairperson of the Panel of Judges at the Industrial Relations Court can issue a verdict that can be implemented first, even though the verdict is filed for resistance or cassation, it turns out to have the same meaning as a immediate verdict. In a civil court, judges may not arbitrarily issue decisions. In the HIR and Rbg as well as the Supreme Court Circular, several conditions or conditions allow the judge to make a decision immediately. These conditions include, among other things, that the lawsuit must be based on the existence of a valid letter in the form of an

[57] Gregorius Yoga Bramantyo, Harjono. "Requirements for Giving Guarantee on the Merta Judgment", 91.

authentic deed, or by an underhand deed which is recognized or based on a decision which has permanent legal force. In contrast to the mechanisms that apply in civil courts, Article 108 of the Industrial Relations Dispute Settlement Law and its explanation do not clearly state what conditions must be met so that the judge can issue a decision immediately.[58] So that if we consider the problem of proof in the imposing of a decision immediately beforehand, this Law should explain more clearly what the evidentiary requirements are so that a immediate decision can be handed down. Of course, these conditions will not be burdensome for either party and are able to accommodate justice for both parties, both of the company and the workers/laborers.

2. Effectiveness of Interlocutory Decisions on Dispute From Islamic Law Perspective

Work is an order of Allah SWT, working in an Islamic perspective is not just an ordinary activity, but an order to work contains the principle of worship. Allah SWT said:[59]

وَقُلِ اعْمَلُوا فَسَيَرَى اللّٰهُ عَمَلَكُمْ وَرَسُوْلُهٗ وَالْمُؤْمِنُوْنَ

[58] Dian Ferricha. "The Existence of Civil Procedure Law in Settling Rights Disputes on Wages for Honorary Workers in Indonesia", 82.
[59] QS. at-Taubah (9): 105.

Meaning: "*And say," You will be working, Allah and your Messenger*."

Wages are a right for workers. In Indonesia's positive legal system relating to employment, wages are an inherent right in workers. Prophet recommends that wages are paid as soon as possible, he said:[60]

وَعَنِ ابْنِ عُمَرَ رَضِىَ اللَّهُ عَنْهُمَا قَالَ: قَالَ رَسُوْلُ اللَّهُ صَلَّى اللَّه عَلَيْهِ وَسَلَّمَ : "أُعْطُوْا الْأَجِيْرَ أَجْرَهُ قَبْلَ أَنْ يَجِفَّ عَرَقُهُ (رواه ابن ماجه)

Meaning: *"From Ibn Umar ra He said that Rasulullah SAW said: Give wages to a worker before his sweat dries."* (HR Ibnu Majah)

In terms of these two legal arguments, if the company is proven to have deviated from the process wage withholding while waiting for the issuance of the termination of employment by the company, then in fact, judges who act as representatives of Allah SWT on earth in upholding justice must immediately provide solutions based on the principle of legal certainty.

The opinion of the judge above is related to Article 96 of the Law on the Settlement of Industrial Relations Disputes in the Gresik Class I A District Court/Industrial Relations. In deciding the provisional demands in the interim decision lies in proving that the plaintiff is

[60] Al-Hafizh Ibn Hajar Al-Asqalani, *Bulugh Al Maram Min Adillat Al Ahkam*, trans. Abdul Rosyad Siddiq, *Complete Translation of Bulughul Maram*, (Jakarta: Akbar Media Eka Sarana, 2007), 412.

deemed not fulfilling the provisions of SEMA Number 3 of 2000 jo. SEMA Number 4 of 2001.

In general, most of the judges have the courage to grant the provisional demands if the plaintiff can show evidence of a suspension letter as stipulated in Article 96 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes jo. Article 155 paragraph (3) of Law Number 13 of 2003 concerning Manpower.

In winning the provisional claim, the plaintiff (worker/laborer) must present evidence that justifies the argument of his claim. Meanwhile, the defendant (the company) has the right to counter the charges filed by the opposing party before the interim decision is issued, namely at the first trial or at the latest at the second trial. Prophet Muhammad once said:[61]

عَنِ ابْنِ عَبَّاسٍ رَضِىَ اللَّه عَنْهُمَا قَالَ: قَالَ رَسُوْلُ اللَّه صَلَّى اللَّه عَلَيْهِ وَسَلَّمَ قَالَ: "لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ, لَادَّعَى نَاسٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ, وَلَكِنِ الْيَمِيْنُ عَلَى الْمُدَّعَى عَلَيْهِ (متفق عليه)

Meaning: *"From Ibn Abbas (ra) actually Rasulullah SAW said: If people were always given (granted) with their accusations, surely they would demand the blood and property of others. But those accused have the right to swear."* (Muttafaq 'alaih)

[61] Al-Hafizh Ibn Hajar Al-Asqalani, *Bulugh Al Maram Min Adillat Al Ahkam*, trans. Abdul Rosyad Siddiq, *Complete Translation of Bulughul Maram*, 647.

In a different editorial, Al-Baihaqi also narrated with a saheeh sanad:

الْبَيِّنَةُ عَلَى الْمُدَّعِى, وَالْيَمِيْنُ عَلَى مَنْ أَنْكَرَ

Meaning: *"The evidence is required for people who are accused, and the oath was compulsory for those who deny it."*

According to Mrs. Qoyyim, said *al-Bayyinah* syar'i interpreted as a name for something that is clear and confirms a truth.[62] While the meaning of *al-Yamiin is* interpreted as a form of affirmation On the basis of a person's oath that is taken before the court with maximum pronunciation, the term is believed that when someone will recite the oath, he will stretch out his right hand and place it on the hand of his friend.[63]

Jumhur Ulama among the Asy-Shafi'i and Hambali considered that the oath must be directed to the defendant (the company) whether the two parties had a family relationship or not. On the other hand, the Malikiyyah school and the inhabitants of Medina (among them seven fiqh experts from the inhabitants of Medina) considered that oaths should not be directed to the defendant, except that there was a

[62] Al-Hafizh Ibn Hajar Al-Asqalani, *Bulugh Al Maram Min Adillat Al Ahkam,* trans. Abdul Rosyad Siddiq, *Complete Translation of Bulughul Maram*, 647.
[63] Abdullah bin Abdurrahman, *Taudhih Al Ahkam min Bulugh Al Maram*,. trans. Thahirin Saputra, Adis Aldizar, M. Irfan, *Syarah Bulughul Maram*, volume 7, (Jakarta: Pustaka Azzam , 2007), 261.

kinship between the two. The purpose of the oath was to make them feel ashamed of the plaintiff.[64]

If the plaintiff does not have evidence, then he must take an oath as a form of emphasis that the claim that is submitted is the truth. Therefore, if we correlate it with Islamic law, workers who are not granted a suspension letter can declare an oath before the court as evidence and their provisional demands must be granted.

This hadith is the basis for judges in deciding disputes. The reason is, the decisions taken by the judges refer to the evidence presented at the trial. If we examine more closely, the above hadith is correlated with the legal principles of proof in Article 1865 of the Civil Code, namely:[65]

"Anyone who argues that he has rights, or points to an event to confirm his or her rights or refute it. a right of another person, is obliged to prove the existence of that right or the event that is stated. "

[64] Abdullah bin Abdurrahman, *Taudhih Al Ahkam min Bulugh Al Maram*, trans. Thahirin Saputra, Adis Aldizar, M. Irfan, *Syarah Bulughul Maram*, volume 7, 263.
[65] Soedharyo Soimin, *Book of Law Civil Law Law,* (Jakarta: Sinar Grafika, 2001), 463.

CHAPTER V

CONCLUSION AND SUGGESTIONS

A. Conclusion

1. The implementation of the interim decision at the Gresik Class IA District Court/Industrial Relations has never been implemented in this court. It was recorded that in the 2 years since 2017-2019 there were only two cases that filed a lawsuit for the imposition of an interim decision regarding the processing fee but all of the submissions were not granted. From these data and facts, it can be concluded that the regulation regarding this provisional decision cannot be implemented and is ineffective.

2. Based on the study of the legal effectiveness theory by Lawrence Friedman, several reasons or problems were found that made the interlocutory decision in the Gresik Class IA District Court/Industrial Relations ineffective, including: First, from the legal substance it was found that there were inconsistencies in the sources of law in the process of payment of wages; Second, from the legal structure, there are fears and doubts by the judges to fulfill the justice of the parties in making the interim decision; Third, from the aspect of legal culture, there is a lack of clarity on the evidentiary requirements for imposing an interim decision in the Industrial Relations Dispute Settlement Law.

B. Suggestions

In reducing the inconsistency in interpretations regarding the period of payment of process wages and the conditions for the imposition of interlocutory decisions, clear regulations should be made that can accommodate a sense of justice for both the company and workers/laborers. Especially in terms of evidence, judges should be able to be firm and active in accordance with the applicable law in ordering any party to show documents, letters or other evidence, not only in the suspension letter, but the bad faith of companies that do not want to. pay processing wages to workers, the workers/laborers' account book should be considered by the judge in the evidence in court.

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APPENDIXES

Appendix 1: Documentation

Interview in Mediation Room of Industrial Relations Court of Gresik

Photo with Informan as one of a Judge in Industrial Relations Court

Interview in Meeting Room of Industrial Relations Court with Judge

Photo with Career Judge in Indusrtial Relations Court of Gresik Class I A

CURRICULUM VITAE

ANANTA PRAYOGA HUTAMA SYAM
Graha Mulya, No. A7, Puosu Jaya, Konda
Konawe Selatan, 93874
Telp: (+62)822-5853-7284
Email: anantasyamasli@gmail.com

PERSONAL DETAILS

Place, Date of Birth	: Bantul, 8th Mei 1998
Sex	: Male
Marital Status	: Single
Religion	: Islam
Personality	: Indonesia

EDUCATION

January 2021	:	Bachelor Degree of Sharia Business Law at State Islamic University of Maulana Malik Ibrahim of Malang
2016	:	Finished Madrasah Aliyah Unggulan of Al-Imdad, Bantul
2013	:	Finished State Junior High School of Bambanglipuro, Bantul
2010	:	Finished State Primary School of Karen, Bantul

EXPERIENCE

2020	:	Presenter/Speaker in International Conference IAIN Kendari
2019	:	Volunteer of Internship & Short Course Program in UiTM Melaka, Malaysia Volunteer in Gresik's District Court/Industrial Relations Class I A
2016	:	Recipient of the Ministry of Religion Achievement Scholarship Program (PBSB)
2015	:	2nd Winner MTQ Competition of Yogyakarta, English Interpretation Branch
2014	:	1st Runner Up Winner in National Islamic Classical Book Reading Competition in Jambi
2013	:	1st Winner of the Islamic Classical Book Reading Competition in Yogyakarta