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Effectiveness of Sela's Decision in Article 96 Law Number 2 of 2004 on the Resolution of Industrial Relations Disputes

Ananta Prayoga Hutama Syam

Department of Islamic Economic Law, Faculty of Sharia, Islamic State University of Maulana Malik Ibrahim, Malang

ORCID
Ananta Prayoga Hutama Syam: https://orcid.org/0000-0001-8864-7260

Abstract.
Disputes in the industrial sector have led to problems in settlement by judges and legal imbalances in law enforcers and society. The objective of this research was to discuss the effectiveness of the implementation of interlocutory decisions in the Gresik Class IA Industrial Relations Court, where there has been a mismatch between the substance, namely the law regarding interlocutory decisions, and the legal structure, namely law enforcers who in this case are judges. This was juridical-empirical research that used a case research approach and descriptive analysis was used. The results demonstrated that the ineffectiveness of the interlocutory decision in Article 96 of the PPHI Law at PHI Gresik was due, first, to the inconsistency of the legal sources used during the payment process of wages between the Constitutional Court and SEMA. Second, the judges felt fear and doubt in fulfilling the justice of the parties when passing the interlocutory decision and fulfilling the workers' lawsuit; however, in the final decision, the employer ultimately won. Third, there was no explanation for the evidentiary requirements for the delivery of the interlocutory decision in the PPHI Law, which was different from the decision in the District Court on Civil Law. The problems with interlocutory decisions will lead to imperfect application of the law, in terms of the substance of the law, the practice of the law enforcers, and the culture of society.

Keywords: effectiveness, interlocutory verdict, industrial relations disputes

Corresponding Author: Ananta Prayoga Hutama Syam; email: anantasyamasli@gmail.com

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1. Introduction

Court is an institution (institution) to adjudicate, resolve a dispute, which has relative and absolute authority in accordance with the laws and regulations that govern and shape it. In accordance with Article 24 paragraph (2) of the 1945 Constitution states that judicial power is exercised by a Supreme Court and the judiciary within the General Courts, the Religious Courts, the Military Courts and the State Administrative Courts. Law No. 14 of 1970 regarding judicial power has been amended by Law Number 35 of 1999 and lastly amended by Law Number 48 of 2009 concerning Judicial Power [1], [2].

Nowadays, disputes in the industrial sector are rife with the growth of various kinds of industrial businesses involving many parties, including companies, service providers, labour, etc. These disputes can be resolved through the Industrial Relations Court (IRC). IRC is present in the middle 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 [3].

In proceedings at the Industrial Relations Court, there is a stage where the judge issues a decision. There are two types of decisions, according to the provisions of Article 185 paragraph (1) HIR, Article 196 paragraph (1) RBg, the types of judges' decisions can be broken down into: first, decisions that are not final decisions, second, final decisions. In the discussion, the researchers took a decision that was not a final decision. These non-final decisions are commonly referred to as interlocutory decisions, intermediate decisions, *tussen-vonnis*, provisional decisions or *"interlocutoir vonnis"* are decisions passed by a judge before the decision on the subject matter.

The provisions regarding this interlocutory decision are regulated in Article 96 of Law Number 2 of 2004 which states that: First, 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 No. 13 of 2003 concerning Manpower, the Chief Judge of the Session must immediately issue a Interlocutory Decision in the form of an order for employers to pay wages and other rights that are normally received by the worker/labourer concerned. Second, the Interim Decision as referred to in paragraph (1) can be passed on the same trial day or on the second trial day. Third, 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 shall order Collateral Confiscation in an Industrial Relations Court Decision. Fourth, the Interim Decision as referred to in paragraph (1) and the Determination as referred to in paragraph (2) cannot be filed against and/or legal remedies cannot be used [4].

Article 155 paragraph (3) of the Manpower Law described above states that workers/labourers still have to work and employers must still pay their wages as long as there is no decision from the industrial relations dispute settlement institution. Employers can make exceptions in the form of suspension of workers/labourers who are in the process of terminating their employment while still paying wages and other rights that workers/labourers normally receive [5].

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 processing money, but all of these submissions were not granted. 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 labourers.

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.

The objectives of this study is, to determine the effectiveness of the interlocutory decision in Article 96 of Law no. 2 of 2004 concerning the Settlement of Industrial Relations Disputes at the Gresik District Court/Industrial Relations Class I A.

2. Research Method

The type of research that researchers use is juridical-empirical research. Empirical research is the opinion and behaviour of community members with the relationship of community life [6]. In this study, researchers used case Approach (study case approach) by examining cases that have become court decisions, both district courts or religious courts, which have permanent legal force. 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. In this study researchers used two types of data sources as follows: Primary data, is data in the form of facts obtained directly from the field [7]. The data obtained was carried out by interviews with parties related to the object of research. This means that researchers conduct interviews with questions in outline and can be developed. Second is secondary data that 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. Data collection techniques in this study were interviews, observation, and study of documents. The interview technique used is direct and semi-structured [8]. This means that researchers

conduct interviews by providing questions in outline and/or can develop related to the research theme.

3. Results and Discussion

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

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/labourer 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:

”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 [9]. The nature of the decision is essentially to facilitate the proceedings of the trial so that the demands filed by the plaintiff (labourer or worker) are different from the petitum contained in the subject of the lawsuit.

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

"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/labourers from their obligations to do work during the termination process, while the company still has the obligation to pay for the rights of workers/labourers that it normally receives.

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/labourers 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:

TABLE 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

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.

3.2. Discussion

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:

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 binding decision [10].

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 [11].

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 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 [12]:

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

”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/labourers. 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 [13].

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/labourers, but when proving it, the panel of judges finds that there are deviations from the Plaintiff (worker/labourer). 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 provisional 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 Provisional. In addition, the Supreme Court Circular Letter Number 4 of 2001 concerning the problem of Immediately Decisions (*Uitvoerbaar Bij Voorraad*) and Provisional which emphasized that [14]:

"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:

"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/labourer will feel disadvantaged and unfair because wages are an important matter for the worker/labourer, 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 [15].

In addition, the possibility that is obtained is that during the termination process, workers/labourers 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/labourer? if in these situations, of course, the worker/labourer 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 immediate decisions.

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 [16].

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 [17].

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 procedures, namely not providing suspension letters to workers/labourers 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 [15].

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/labourers should be considered by the judge in the 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.*" [16]

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/labourer 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.

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 [17].

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 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 [16]. 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/labourers.

4. Conclusions

The ineffective interlocutory decision in Article 96 of the law no. 2 of 2004 on the resolution of industrial relations disputes at Industrial Relations Court of Gresik Class I A 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 law on the resolution of industrial relations disputes 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.

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