

***Juridical Analysis of Execution of
Industrial Relations Court Decisions That
Reemploy Workers
(Case Study of Court Decision Number:
17/Pdt.Sus-PHI/2021/PN.Gsk)***

By:

¹ Aminatuz Zuhriyah , ² Rihantoro Bayu Aji , ³ Andy Usmina Wijaya

^{1,2,3} Master of Laws at Wijaya Putra University, Surabaya

Email: ¹ aminatuz1976@gmail.com, ² bayuaji@uwp.ac.id, ³
andyusmina@uwp.ac.id

Abstract

The existence of Law Number 2 of 2004 concerning settlement of industrial relations disputes which regulates dispute resolution in the form of disputes over rights, disputes of interests, disputes over termination of employment and disputes between trade unions within one company. Disputes for termination of employment in this study regarding a certain time agreement (PKWT) which is estimated to be in accordance with the provisions of law number 13 of 2003 concerning employment, which should for the sake of the law become a certain time a work agreement (PKWTT) . The procedural law applicable to the civil procedural law applicable to the industrial relations court is the civil procedural law that applies to courts within the general judiciary unless specifically regulated in article 57 of Law Number 2 of 2004 concerning the settlement of industrial relations disputes. Sources of civil procedural law that apply in court are HIR (Het Herziene Indonesisch Reglement) applies to Java and Madura and RBg (Rechtsreglement Buitengewesten) applies to outside Java and Madura in addition to the PPHI law it also does not specifically regulate the execution of industrial relations court decisions regarding layoffs where the court orders certain legal subjects to commit acts law by re-employing workers according to the decision of the industrial relations court st the Gresik district court number 17/Pdt.Sus-PHI/2021/PN.Gsk. , dated June 10, 2021. This study uses a normative legal method using a statutory approach and a case approach. the results of the research on legal efforts carried out by workers if the employer does not implement the decision to re-employ works is by submitting a request for execution to the Gresik district court, and if the employer does carry out the worker can file a civil lawsuit against the law.

Keywords: *Industrial Relations Court Decision, Execution, Reemployment, Workers.*

A. INTRODUCTION

1. Background

In this era of industrialization, the problem of industrial relations disputes is increasing and complex, so that institutions and mechanisms for resolving industrial relations disputes are needed that are fast, appropriate, fair and inexpensive. With the promulgation of Law of the Republic of Indonesia Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (PPHI), it is hoped that industrial relations will be harmonious, dynamic and just. Industrial relations is a system of relations formed between actors in the process of producing goods and/or services consisting of employers, workers/laborers and the government which is based on Pancasila values and the 1945 Constitution of the Republic of Indonesia (abbreviated UUD 45) can be realized.

Industrial Relations is a system of relations that places the positions of employers and workers/labor as complementary relations in order to achieve common goals. In addition to the above elements, in the Indonesian employment system there is a government that protects and protects the parties. The government issues signs in the form of labor regulations in order to create a harmonious working relationship between employers and workers/labourers.¹

The industrial relations process above does not always run smoothly, sometimes disputes arise between employers and workers, whether disputes regarding rights, disputes over interests, disputes over termination of employment, or disputes between trade unions/labor unions within a company.

Basically, humans are social creatures (zoon politicon), namely creatures that cannot escape from interacting or relating to each other in order to fulfill their needs, both physical and spiritual. So that in conducting relations with other human beings, it is certain that there will be similarities and differences in interests, views, and differences that can give birth to disputes, contradictions or conflicts, is a situation (state) in which two or more parties fight for the truth of their respective goals. can't be put together.²

In Article 1 number 15 of Law Number 13 of 2003 concerning Manpower it is emphasized that the employment relationship is the relationship between employers and workers/laborers based on a work

¹Sri Subiandini Gultom, 2008, *Legal Aspects of Industrial Relations*, second print, Inti Prima Promosindo, h.14., Jakarta

²Moch. Faisal Salam, 2009, *Settlement of Industrial Relations Disputes in Indonesia*, CV. Mandar Maju, h. 156., Bandung

agreement, which contains elements of work, wages and orders. These three elements are cumulative, meaning that if one of the elements is not met, it will result in a non-working relationship. The system of relations formed between actors in the process of producing goods and/or services consisting of elements from employers, workers/laborers and the government is what is referred to as industrial relations.³

This work relationship is regulated in Article 50 of Law Number 13 of 2003 concerning Manpower in conjunction with Article 2 paragraph (1) of Government Regulation Number 35 of 2021 concerning work agreements for a certain time, outsourcing, working time and rest periods and termination of employment (abbreviated as PP Number 35 of 2021; it states that work relations occur after a work agreement is made between the employer and the worker.

According to Lanny Ramli, the employment relationship associated with the implementation of work or work has the meaning: "activities for mobilizing one's labor/service, namely continuous work at a certain time and regularly for the benefit of the person who ordered it (employer) in accordance with the mutually agreed work agreement . So the employment relationship is the implementation of the work agreement that has been made by workers and employers.⁴

A work agreement is an agreement made between a worker and an employer or employer that fulfills the working conditions, rights and obligations of the parties, as stated in Article 1 paragraph (14) of Law Number 13 of 2003. According to the provisions of Article 56 paragraph (1) Law Number 13 of 2003 as amended by Law Number 11 of 2020 concerning Job Creation in Article 56 paragraph (1), Juncto (abbreviated Jo) Article 2 paragraph (4) PP Number 35 of 2021 concerning time work agreements certain terms, outsourcing, working time and rest time and termination of employment, that work agreements can be made for a certain time work agreement (PKWT) or an unspecified time work agreement (PKWTT). Based on these provisions, the work agreement must fulfill 3 (three) elements, namely the existence of orders, work and wages, while those who govern are called employers/employers while those who are governed are called workers.

Work agreements can be made in writing or verbally, so the employment relationship is the (legal) relationship between employers and workers based on work agreements. A work agreement is something concrete

³Maimun, 2004, An Introduction to Labor Law, Print I, Pradnya Paramita, h. 101., Jakarta

⁴Lanny Ramli, 2008, Labor Law, Airlangga University Press, h.2., Surabaya.

or real, with a work agreement there will be a bond between employers and workers. In other words, the bond due to the existence of this work agreement is a work relationship.⁵

The article explains that work agreements are the beginning of the birth of work relations between employers and workers with the substance of the agreement made must not conflict with statutory regulations.⁶

Disputes regarding termination of employment so far have mostly occurred because of the act of termination of employment carried out by one party and the other party cannot accept it, termination of employment can occur at the initiative of both employers and workers. From the employer it is carried out because the worker commits various actions or violations, and vice versa, termination of employment can also be carried out at the request of the worker because the employer does not carry out the agreed obligations or acts arbitrarily towards the worker/laborer.⁷

The procedure for settling industrial relations disputes ends with a decision from the industrial relations court. The background is the existence of a judge's decision which decides that the entrepreneur re-employs the worker/laborer. However, in reality the employer did not implement the decision to re-employ the worker as stated in Decision Number 17/Pdt.SusPHI/2021/PN.Gsk., dated 10 June 2021., which in this case already has permanent legal force (inkracht van gewijsde).

In Law Number 2 of 2004 it is explained that the procedural law that applies to industrial relations is the civil procedural law that applies to courts within the general court environment, unless specifically regulated in this Law, as provided for in Article 57 of Law Number 2 Year 2004, meaning that all legal proceedings for the settlement of industrial relations disputes use civil law proceedings, unless the Industrial Relations Dispute Settlement Act (PPHI) specifically stipulates certain rules. so that there is a legal vacuum, meaning that there is no law that specifically regulates the execution of industrial relations court decisions.

Article 1 number 17 of Law Number 2 of 2004 confirms "The Industrial Relations Court is a special court established within the district court which has the authority to examine, try and give decisions on industrial relations disputes". As a court within the district court, the execution of industrial

⁵Adrian Sutedi, 2006, Labor Law, Sinar Graphic, p.56., Jakarta.

⁶Lalu Husni, 2008, Introduction to Indonesian Labor Law, VIIIth Revised Edition, PT. Raja Grafindo Persada, p.54., Jakarta

⁷Lalu Husni, 2007, Settlement of Industrial Relations Disputes Through Courts and Out of Court, PT. Raja Grafindo Persada, p.46., Jakarta

relations court decisions follows the execution regulations that apply to district courts, unless Law Number 2 of 2004 stipulates otherwise.

Thus, when talking about execution, it must refer to the civil procedural law regulated in the *Herzien Indonesia Regulation* (HIR) which applies to Java and Madura, while *Rechtsreglement Buitengewesten* (RBg). The existence of the Industrial Relations Court has provided fresh air for workers/labourers to seek justice. Industrial relations court decisions that have permanent legal force (*incracht van gewisjde*) can be submitted for execution, as stated by Abdulkadir Muhammad:

A court decision is meaningless if it is not implemented, therefore a judge's decision has executorial legal force, namely the power to carry out what is stipulated in the decision by force with the help of state tools. As for what gives executive power to the judge's decision is the head of the decision which reads "For the sake of justice based on Belief in the One and Only God".

Basically the decisions of judges who have permanent legal force can be implemented, but not all of the decisions can be implemented (executed). In principle, only decisions that are condemnatory in nature (decisions containing punishment) can be executed. Whereas declaratory decisions cannot be executed, because they are not contained or there is no right to an achievement or decisions that contain new characteristics and circumstances, so they do not require coercive means to carry them out.⁸

The party authorized to carry out the execution of industrial relations court decisions is the local District Court, in this case the Gresik District Court. And the legal remedies taken by workers if the employer does not carry out the court's decision, namely by submitting an application for execution to the court, if the employer does not carry out the decision to re-employ, then the worker can file a civil lawsuit against the law because it has harmed the worker.

2. Formulation of the problem

Based on the background above, the authors draw the formulation of the problem:

- 1) What are the arrangements for the execution of the industrial relations court?
rehiring workers?
- 2) What are the legal remedies taken by workers against re-employment decisions?

⁸Djamanat Samosir, 2011, *Civil Procedure Law Stages of Settlement of Civil Cases*, Nuansa Aulia, h.327., Bandung

3. Research methods

study uses normative juridical research, namely research conducted by examining all laws related to legal research being handled, namely Law Number 13 of 2003, Law Number 2 of 2004, to study intensively the background of the problem, the situation and the position of an ongoing event, as well as certain social environment interactions that are as they are; using a statutory approach (statute approach) and a case approach (case approach).

B. DISCUSSION

1. Legal Protection for Workers Upon Re-Employment Decisions

Legal protection for workers is needed considering the position of workers is on the weak side. Protection of workers is intended to guarantee the fulfillment of the basic rights of workers and guarantee equality of opportunity and treatment without discrimination on any basis to realize workers' welfare. With the implementation of the voluntary execution of industrial relations court decisions by the party sentenced to carry out the decision can be seen as the implementation of the basic principles of the purpose of the law itself, namely legal certainty, legal justice and legal protection.

In theory, in industrial relations court relations, there is a legal principle which states that workers and employers have an equal position. According to labor terms, it is called a work partner. However, in practice, the positions of the two were not equal. Entrepreneurs as owners of capital have a higher position than workers. This is clearly seen in the creation of various company policies and regulations.⁹

Given the lower position of workers than employers, it is necessary for the government to intervene to provide legal protection, so that justice in employment can be achieved more quickly. Legal protection is something that is important because it is an element that must exist in a country and is no exception in terms of legal protection for workers. In the life of the state, it is certain that there is a good relationship between fellow citizens and between countries and their citizens. This relationship can then give rise to rights and obligations, legal protection is the right of citizens and providing legal protection is an obligation of the state.

According to Roscoe Pound, "in the theory of legal protection (Sociological Jurisprudence) it is stated that human interests are divided into 3 (three) interests, namely, " *public interest* (public interest), *social interest*

⁹ Sehat Damanik, 2006, *Outsourcing and Agreements According to Law Number 13 of 2003 concerning Employment* ,, Jakarta, DSS Publishing, p.102.

(community interest), and *private interest* (individual interest)".¹⁰The most important public interest "covers the interests of the state as a legal entity in maintaining its personality and also its substance includes the interests of the state as guardian of the interests of society".¹¹

The substance of industrial relations disputes in terminating employment relations contains complications, because one of the rulings of the Industrial Relations Court's decision is to order employers to re-employ workers/laborers. The HIR (procedural law that applies to the regions of Java and Madura) or RBg (procedural law that applies to areas outside Java and Madura) and Law Number 2 of 2004 do not specifically regulate the manner of executing court decisions in which the court orders certain legal subjects. to take legal action, for example re-employing workers according to their original position, it is difficult to execute if the employer does not voluntarily carry out the order of the decision.

Legal protection is a protection given to legal subjects in accordance with the rule of law, both preventive and repressive forms, both written and unwritten in order to enforce legal regulations. Legal protection is an illustration of the functioning of the legal function to realize legal objectives, namely justice, protection and legal certainty. The good or bad of a law depends on whether the law can provide protection for individuals/humans.

Satjipto Rahardjo stated "legal protection is to provide protection for human rights (HAM) that are harmed by other people and that protection is given to the community so that they can enjoy all the rights granted by law".¹²

Pursuant to Article 58 of Law Number 2 of 2004 it states that: "In the process of proceeding at the Industrial Relations Court, the parties in the case are not charged a fee including execution costs whose claim value is below Rp. 150,000,000.- (one hundred and fifty million rupiah))". In Law Number 2 of 2004 it provides guarantees for the protection of workers/laborers claiming their rights through the Industrial Relations Court without being burdened with court fees, including execution costs, for lawsuits whose value is below IDR 150,000,000 (one hundred and fifty million rupiahs).) is fully borne by the state (prodeo).

Execution of the decision to re-employ workers, as long as it is understood as a type of execution for carrying out certain actions, in this case an order to re-employ workers. Such as the decision of the industrial relations court number: 17/Pdt.Sus-PHI/2021/PN.Gsk., dated 10 June 2021, which normatively based on civil procedural law (HIR/RBg) is the basis for the

¹⁰ Salim HS and Ertis Septiana Nurbani, 2013, **Application of Legal Theory in Thesis and Dissertation Research** . Jakarta, Raja Grafindo Persada, h. 266.

¹¹ *Ibid.*

¹² Satjipto Rahardjo , *op. cit.* , h. 69.

execution of the hiring decision. the return of workers by the punished party must carry out the decision, either voluntarily or forced execution.

The decision of the industrial relations court with the injunction ordering "re-employment of workers" cannot be implemented/non-executable because the decision is a constitutive decision, not a *condemnatory decision* (punishment). As mentioned in Article 170 of Law Number 13 of 2003 concerning Manpower, it is stated that one of the rulings in industrial relations dispute disputes is the obligation to re-employ workers as a result of illegal termination of employment.

The fact that the Industrial Relations Court Decision at the Gresik District Court occurred in Case Number 17/Pdt.Sus- PHI/2021/PN.Gsk., dated 10 June 2021 for which dr. Adhytia Wicaksono (applicant for the execution/plaintiff) at the Gresik District Court and PT.Cipta Nirmala (Semen Gresik Hospital) the Defendant/employer has carried out the verdict voluntarily by rehiring workers as general practitioners at PT. Cipta Nirmala (Semen Gresik Hospital).

Regarding the decision to re-employ workers, based on the legal protection theory approach, it is always identified with the condition that states the existence of a weak party against those in power. In employment law relations, the existence of workers/laborers who are synonymous with weak parties deserves legal protection against them. Philosophically, the birth or enactment of Law Number 13 of 2003 concerning Manpower and Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes is to protect workers who are in a weak position so that this law will provide protection for equal rights and obligations between workers and employers. However, in current developments, the law is no longer in accordance with current employment developments.

Therefore, the government must carry out more comprehensive legal protection by revising Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement in order to protect the rights and interests of workers, so as to create harmonious and balanced working relations, and create legal certainty for worker.

In the decision of the industrial relations court number: 17/Pdt.SusPHI/2021/PN.Gsk., dated 10 June 2021, the legal protection given to workers dr. Adhytia Wicaksono can clearly be seen in the ruling "ordering employers to re-hire workers to their original position as general practitioners at PT. Cipta Nirmala (Semen Gresik Hospital)" is a form of legal protection for workers, because through the industrial relations court it is deemed insufficient to provide legal protection for workers. So in order to protect the interests of workers manifested in the form of strengthening labor unions within the company.

Apart from that, the legal protection for workers, Dr. Adhitya Wicaksono, in the industrial relations court decision number: 17/Pdt.Sus-PHI/2021/PN.Gsk., June 10 2021. pay wages as long as the plaintiff is not reemployed starting from June 2020 to March 2021 in the amount of IDR 64,473,700.00 (sixty four million four hundred and seventy three thousand rupiah) and the defendant's sentence to pay dwangsom forced money to the plaintiff dr . Adhitya Wicaksono in the amount of Rp. 200,000, - (two hundred thousand rupiah) per day for the delay in implementing the contents of the decision to re-employ the plaintiff to his original position as a general practitioner at PT. Cipta Nirmala (Semen Gresik Hospital) as of this decision has permanent legal force. In this ruling, it is a form of realizing legal protection for dr. Adhitya Wicaksono who legally reflects the realization of a sense of justice for workers.

2. Non-executable nature of the decision to be reinstated

Not all industrial relations court decisions have executorial power or not all decisions are automatically enforceable, so not all industrial relations court decisions can be executed. However, there are also industrial relations court decisions that are non-executive (constitutive decisions).

The basic principle of work relations is to create a harmonious and just relationship accompanied by adequate social security potential that can ensure continuity of work and business. Harmonization of work relations is the basic capital to create good and sustainable productivity.¹³

A constitutief or constitutive decision (*constitutief vonnis*) is a decision that determines a legal situation, whether it is annulling a legal situation or giving rise to a new legal situation. Which does not contain elements of punishment, as in Decision Number: 17/Pdt.Sus-PHI/2021/PN. Gsk., dated June 10, 2022 which is constitutive in nature, i.e. a decision that creates a new situation where the decision cannot be executed (*non-executable*) because a constitutive decision in the form of giving rise to a new legal condition, namely the expiration of a work agreement for a certain time which gives rise to a new legal condition, namely being employed return workers.

Decision of the Industrial Relations Court at the Gresik District Court, Number: 17/Pdt.Sus-PHI/2021/PN.Gsk, dated 10 June 2021, as follows:

JUDGE

1. Declare that the Defendant has been duly summoned, but is not present;
2. Granted the Plaintiff's lawsuit in its entirety with *verstek* ;
3. Declare that the working relationship between the Plaintiff and the Defendant by law is an Unspecified Time Work Agreement (PKWTT) starting from the first time he started working;

¹³ Juanda Pangaribuan, 2010, **Practical Guide to Settlement of Industrial Relations Disputes**, Revised Edition, , Jakarta; Prosperous Intitama Earth, p.1.

4. Ordered the Defendant to re-employ the Plaintiff to his original position as a general practitioner at PT. Cipta Nirmala (Semen Gresik Hospital);
5. Ordering the Defendant to pay wages as long as the Plaintiff is not employed from June 2020 to March 2021 in the amount of IDR 64,473,700 (sixty four million four hundred seventy three thousand seven hundred Rupiah);
6. Sentenced the Defendant to pay forced money (dwangsom) to the Plaintiff in the amount of Rp. 200,000 (two hundred thousand rupiah) per day for delays in implementing the contents of the decision to re-employ the Plaintiff to his original position as a general practitioner at PT. Cipta Nirmala (Semen Gresik Hospital) as of this decision has permanent legal force;
7. Charge all costs incurred in this case to the State in the amount of Nil;

Because of the profession/work of general practitioners at PT. Cipta Nirmala (Semen Gresik Hospital) is bound by a work agreement for a certain time (PKWT) which in the *a quo in casu case* is the profession/occupation of the Plaintiff as a general practitioner at PT. Cipta Nirmala (Semen Gresik Hospital), then the profession/work of a general practitioner at PT. Cipta Nirmala (Semen Gresik Hospital) cannot be the object of a specified time work agreement (PKWT), thus the specified time work agreement (PKWT) imposed by the Defendant/Entrepreneur to the Plaintiff/Worker when he starts working as a general practitioner at PT. Cipta Nirmala (Semen Gresik Hospital) is contrary to the provisions of Article 59 paragraph (1) and paragraph (2) of Law Number 13 of 2003 which was amended by Law Number 11 of 2020 concerning Job Creation, so that for the sake of law the original relationship the work between the Plaintiff and the Defendant based on/bound by a specified time work agreement (PKWT) changed to an unspecified time work agreement (PKWTT).

Therefore, in the *a quo in casu case*, the specified time work agreement (PKWT) between the plaintiff and the defendant by law has changed to an unspecified time work agreement (PKWTT), then for the reasons the defendant terminated the employment relationship with the plaintiff based on the end of the specified time work agreement (PKWT) is without legal grounds. So that the working relationship between the plaintiff and the defendant has not been interrupted and it is appropriate for the plaintiff to be reinstated as a general practitioner at PT.Cipta Nirmala (Semen Gresik Hospital) and the defendant is punished to pay wages as long as the plaintiff is not reinstated in the amount of Rp. 64,473,700.00,- (six twenty four million four hundred seventy three thousand seven hundred rupiah), for 10 months (June 2020 to March 2021).

The defendant was also sentenced to pay a forced payment (*dwangsom*) of Rp. 200,000 (two hundred thousand rupiah) per day for every delay in carrying out this decision. So it can be determined that as long as or every time

the convict does not fulfill the sentence, he must be given an amount of money the amount of which is determined in the judge's decision. Therefore the Panel of Judges has ordered the defendant to re-employ the plaintiff/worker to his original position as a general practitioner at PT. Cipta Nirmala (Semen Gresik Hospital) and so that the defendant obeys and implements the judge's decision.

Decision of the Industrial Relations Court at the Gresik District Court Number: 17/Pdt.Sus-PHI/2021/PN.Gsk., dated June 10, 2021. One of the above mentioned which is the object of this thesis research stated: "Ordered the Defendant to employ the Plaintiff returned to his original position as a general practitioner at PT. Cipta Nirmala (Semen Gresik Hospital)". As the subject matter of this research, the verdict can be categorized as a constitutive decision that ensures a legal situation that creates a new legal situation; in the case referred to, namely the expiration of the specified time work agreement (PKWT) which gave rise to a new legal situation, namely being rehired as a general practitioner at PT. Cipta Nirmala (Semen Gresik Hospital).

As we all know, the explanation regarding the constitutive decision is the emergence of a new legal situation from the Plaintiff/dr. Adhitya Wicaksono, who before the lawsuit was filed through the Industrial Relations Court at the Gresik District Court, was in a state of termination of employment as a result of the expiration of the work agreement (PKWT) with PT. Cipta Nirmala (Semen Gresik Hospital) where he worked all this time, until the court process the judge decided the dispute case with the judge's decision ordering the re-employment of dr. Adhitya Wicaksono as a general practitioner at PT. Cipta Nirmala (Semen Gresik Hospital). So that the nature of a constitutive decision as part of a non-executable decision is because a decision ordering the re-employment of workers is a decision that cannot be executed because it is not a condemnatory *decision*.

Decisions that are non-executable (cannot be implemented) if:

1. The decision is *declaratory* (statement) and *constitutive*.
2. The defendant's assets for execution do not exist.
3. The object of execution is in the hands of a third party.
4. Execution cannot be executed against tenants.
5. The boundaries of the object to be executed are unclear.
6. The goods to be executed are not in accordance with the goods referred to in the verdict.
7. It is impossible for the decision to be executed because the object to be executed is destroyed.
8. The status of the land to be executed has changed to become state land.
9. The object of execution is abroad.

Industrial relations court decision number: 17/Pdt.SusPHI/2021/PN.Gsk., dated 10 June 2021, which ordered "ordered

the Defendant to employ the plaintiff in his original position as a general practitioner at PT.Cipta Nirmala (Semen Gresik Hospital) ”; is a constitutive decision because the decision is non-executable because the decision is not punitive, but can be interpreted as giving rise to a new situation, namely the condition of the termination of the worker's work agreement dr. Adhitya Wicaksono, which gave rise to a new legal situation, namely being reinstated as a general practitioner at PT. Cipta Nirmala (Semen Gresik Hospital).

Factors that hinder entrepreneurs from carrying out industrial relations court decisions regarding executions with constitutive/non-executable decisions, such as:

- a. The vacancy in the position of doctor previously occupied by dr. Adhitya Wicaksono, has been filled by a replacement, another doctor or a new one, so it is impossible for 1 (one) position to be occupied or filled by 2 (two) people/doctors;
- b. The position of a doctor with a standard capacity for medical service skills can be filled and replaced by other personnel who have the capacity for medical service skills according to the standard of work, or it means that it is not attached to just one person;
- c. There is a fusion of 2 (two) positions or personnel, into 1 position or personnel who can do 2 (two) jobs at once, because the 2 (two) jobs carried out are identical to each other as a result of the reduced level of service, so that the previous job becomes a place dr. Adhitya Wicaksono worked, merged with other doctors who have the same job responsibilities;
- d. There is an increase in job specifications and job descriptions in the job/position where dr. Adhitya Wicaksono previously worked. When there was a vacancy in the previous job/position, dr. Adhitya Wicaksono occupied, there was a change in the organizational structure which required higher job specifications and different job descriptions, for example previously only ordinary doctors (general) changed to become certain specialist doctors who filled the job/position.
- e. Previous working relationship between workers, dr. Adhitya Wicaksono and company, PT. Cipta Nirmala (Semen Gresik Hospital) is not harmonious or there are always disputes between the two, so when a decision is made through a judge's decision, the implementation of the decision will be very difficult for both of them or it cannot be carried out (non-executable).

From the description above, it can be seen that the non-executable nature of the decision to be reinstated in case Number: 17/Pdt.Sus.PHI/2021/PN.Gsk., June 10, 2021; the subject of study in this research ordering workers to be reemployed is a non-executable decision; which is difficult to implement, but in this study the decision has been implemented by PT. Cipta Nirmala (Semen Gresik Hospital) voluntarily and

workers have returned to work at the company with the position of general practitioner.

Referring to the procedural law that applies to the Het Herziene Indonesisch Reglement (HIR) and Law Number 2 of 2004 so that it is known that legal remedies against non-executable reemployment decisions because the verdict is constitutive / cannot be implemented because the decision is not a sentence ; a ruling ordering an employer to re-employ a worker whose employment relationship has been terminated will have an impact on the absence of legal certainty for the worker, the existence of a legal vacuum regarding the execution of the decision, the loss of the right to continue working, the violation of law by the employer, the loss of dignity and authority of the Industrial Relations Court , and loss of worker welfare.

The legal protection that can be carried out to anticipate this problem is by pressing the employer to carry out the decision through raising trade unions/labor unions in the company or by filing a lawsuit against the law for not carrying out the constitutive decision in the form of "ordering the employer to re-employ." workers in their original position as general practitioners at PT. Cipta Nirmala (Semen Gresik Hospital)". And can also propose to legislators to revise Law Number 2 of 2004 in order to protect the interests and rights of workers and create legal certainty for workers.

So that not all industrial relations court decisions can be executed or have executorial legal force. Only industrial relations court decisions that have permanent legal force can be executed and decisions are condemnatory in nature, because they already contain a form of permanent and definite legal relationship between the litigants, either voluntarily or forcibly with the assistance of state power. However, in the decision to be reinstated in case Number: 17/Pdt.Sus-PHI/2021/PN.Gsk., June 10, 2021; which is the subject of study in this research that orders workers to be reemployed is a non-executable decision.

Problems arise if the employer does not voluntarily comply with the decision of the industrial relations court which decides the employer to re-employ workers. After the industrial relations dispute has been decided and the losing party is obliged to carry out the contents of the decision, but the losing party/employer does not want to carry out the decision voluntarily, the winning party can submit a request for execution to the Chairperson of the Industrial Relations Court at the District Court to implement the decision.

In accordance with one of the principles of execution described in the previous chapter, that a decision can be filed for execution if it already has permanent law, meaning that it is no longer possible to pursue it again to the next level of court, if the losing parties do not want to carry out the decision properly. voluntarily, and if the decision is *condemnatory* (punishing). Only

then can the winning party submit a request for execution against the Chairperson of the Industrial Relations Court.

3. Legal Certainty on the Execution of Decisions on Re-Employment

The aim of the litigants to submit cases, especially civil cases to the court, is to resolve the problem completely and find legal certainty through the courts. In principle, only decisions that have permanent legal force can be implemented, namely court decisions that are *condemnatory in nature*, because the decision has permanent legal force which contains a permanent and definite legal relationship between the litigants. An amar that has the characteristic of *a condemnatoir* is simply an order that can be executed if the defendant is reluctant to voluntarily comply with the verdict. Furthermore, the legal action taken by the court against the losing party in a court decision is called execution.¹⁴

According to Achmad Ali "legal certainty must be maintained for the security and order of a country, positive law must always be obeyed. Based on the theory of legal certainty and the values to be achieved are the values of justice and happiness.¹⁵

Meanwhile, Satjipto Rahardjo stated "the existence of the principle of legal certainty is a form of protection for justice-seekers (justice seekers) against arbitrary actions, which means that a person will and can obtain something expected in certain circumstances".

Taking into account the theory of legal certainty above can be used as a basis for analyzing the Decision of the Panel of Judges at the Industrial Relations Court at the Gresik District Court which in its order "Ordered the defendant to re-employ the plaintiff to his original position as a general practitioner at PT. Cipta Nirmala (Semen Gresik Hospital)". The object of study in this research ordering workers to be reemployed is a non-executable decision.

In this case, the parties listed in the decision, namely workers, dr. Adhitya Wicaksono and company, PT. Cipta Nirmala (Semen Gresik Hospital), both in relation to fellow individuals/organizations and in relation to society at large. The rules in the form of decisions are meant to be a limitation for workers, dr. Adhitya Wicaksono and company, PT. Cipta Nirmala (Semen Gresik Hospital), as well as the surrounding community in burdening or taking action against parties in social (social) life. The rules and the implementation of these rules give rise to legal certainty.

The decision to re-employ workers refers to the application of clear, permanent, consistent and consequential laws whose implementation cannot

¹⁴ A. Mukti Arto, 2000, *Civil Case Practice*, Yogyakarta; Student Library, h. 314.

¹⁵ Achmad Ali, 2002, *Revealing the Law (A Philosophical and Sociological Study)*, Jakarta, Toko Gunung Agung, p.95,

be influenced by subjective circumstances. Legal certainty which is synonymous with clear, permanent, consistent and consistent law enforcement, can be described in full as follows:

- Clear application of law, implying that the intended decision is very clear and does not give rise to multiple interpretations or bias; The verdict with an order against the company, PT. Cipta Nirmala (Semen Gresik Hospital) to reinstate workers, dr. Adhitya Wicaksono;
- Still, regarding the previous legal relationship between the companies, PT. Cipta Nirmala (Semen Gresik Hospital) with workers, dr. Adhitya Wicaksono; remain on the main issues that occur between employers and workers, which in the end is decided through a re-employment order;
- Be consistent, all parties involved in reaching the decision of the judge at the industrial relations court should have been consistent, including: the Worker, the Company, and including the judicial institution adjudicating the case, can jointly express their support for the implementation of the decision;
- Consequentially, the achievement of a decision can be expressed as a seriousness to solve the problem. The industrial relations court as a judicial institution that is independent and not easily influenced by parties with certain interests is inconsistent (unable to guarantee) the implementation of orders to re-employ workers.

Legal certainty stems from Juridical-Dogmatic teachings, based on a positivistic school of thought in the world of law, which tends to see law as something autonomous, independent, because for adherents of this thinking, law is nothing but a collection of rules. The purpose of law is none other than simply guaranteeing the realization of legal certainty. Legal certainty is embodied by law with its nature which only makes a general rule of law. The general nature of legal rules proves that law does not aim to achieve justice or benefit, but solely for certainty.

The concept of legal certainty which forms the basis for discussing the execution of a verdict for reinstatement, is inseparable from juridical-dogmatic teachings in positivistic thinking in the world of law. Ratification of rules as written law is a characteristic of positivism which is a real legal guideline that must be carried out by the parties in the creation of these written rules, or in the form of written legal decisions that are binding on the parties within them.

Through some of the descriptions above, legal certainty as a perspective of law as something that is autonomous and independent, because in this thinking, law is a collection of rules, the context for the realization of legal certainty as a guarantee of law as rules that are enforced clearly, permanently, consistently and consequently . In another phrase, it can be analogized that legal certainty is a guarantee for the implementation of the rule of law by parties who are in the intended jurisdiction.

Due to the verdict of the industrial relations court, legal uncertainty is experienced by workers because the verdict does not yet reflect legal certainty for workers because the decision is constitutive/non-executable.

Regarding the constitutive ruling on reemployment, which is not implemented by the employer, the dignity and authority of the industrial relations court is lost, and harassing law enforcement agencies. And also the entrepreneur can be categorized as having committed an unlawful act and the entrepreneur is punished to pay compensation.

The implementation of the court's decision did not all go smoothly, especially in the implementation of the judge's decision at the industrial relations court regarding the decision ordering employers to re-employ workers who had been terminated. Sometimes the entrepreneur rejects the judge's decision and does not voluntarily carry out what the judge ordered.

The court is a law enforcement agency that deserves respect and its decisions must be obeyed by anyone ordered to do so. Entrepreneurs who do not carry out court orders have actually done so.

C. CONCLUSION

- 1) In Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes there are still many deficiencies in the regulation regarding the procedures for implementing court decisions (execution) which are not specifically regulated, but based on Article 57 Law Number 2 of 2004 the implementation of court decisions applies procedural law civil. The procedure for implementing court decisions (execution) in civil procedural law uses legal sources from HIR/RBg, which still have many obstacles such as industrial relations decisions that decide the re-employment of workers upon termination of employment with the end of the work agreement made by the company, which in practice it turned out to be difficult to do because the civil procedural law does not recognize the type of execution for hiring workers again. And also legal protection for workers with reemployment decisions that are not implemented by employers.
- 2) That not all industrial relations court decisions have executorial power, but in this study decisions ordering the re-employment of workers are constitutive decisions that do not have executorial/non-executive powers, so that if the employer does not implement the industrial relations court's decision, the worker can file legal action .

REFERENCES

Book

- Agustina, Rosa, 2003 *Perbuatan Melawan Hukum*, Pasca Sarjana Fakultas Hukum Universitas Indonesia, Jakarta
- Ali Achmad, 2002, *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, Penerbit Toko Gunung Agung, Jakarta.
- Arto A.Mukti, 2000, *Praktek Perkara Perdata*, Pustaka Pelajar, Yogyakarta.
- Asnawi M. Natsir, 2014, *Hermeneutika Putusan Hakim*, UUI Press, Yogyakarta
- Bachar Djazuli, 1987, *Eksekusi Putusan Perkara Perdata-Segi Hukum dan Penegakan Hukum*, Akademika Pressindo, Jakarta
- Bratawijaya Johannes, 2002, *Eksekutabilitas Putusan Peradilan Perdata (Penelitian Asas, Norma Dan Praktek Penerapannya)*, Puslitbang Hukum dan Peradilan Badan Litbang Diklat Kumdil Mahkamah Agung RI, Jakarta
- Damanik Sehat, 2006, *Outsourcing dan Perjanjian Menurut Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan*, DSS Publishing, hal.102., Jakarta
- Fuady.M, 2002, *Perbuatan Melawan Hukum*, Citra Aditya Bakti, Bandung
- Gultom Sri Subiandini, 2008, *Aspek Hukum Hubungan Industrial*, cet kedua, Inti Prima Promosindo, Jakarta
- Harahap M.Yahya, 1989, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Gramedia, Jakarta
- _____, 2009, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Gramedia Pustaka Utama, Jakarta
- _____, 2018, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, Sinar Grafika, Jakarta.
- Husni Lalu, 2007, *Penyelesaian Perselisihan Hubungan Industrial Melalui Pengadilan dan Di Luar Pengadilan*, PT. Raja Grafindo Persada, Jakarta
- _____, 2008, *Pengantar Hukum Ketenagakerjaan Indonesia Edisi Revisi Ke-VIII*, Raja Grafindo Persada, Jakarta
- HS Salim dan Nurbani Ertis Septiana, 2013, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi.*, Raja Grafindo Persada, Jakarta
- Ibrahim Johny, 2007, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayu Media, Malang

- Maimun, 2004, Hukum Ketenagakerjaan Suatu Pengantar, Cetakan I, Pradnya Paramita, Jakarta
- Makarao Mohammad Taufik, 2004, Pokok-Pokok Hukum Acara Perdata, Rineka Cipta, Jakarta.
- Marzuki Peter Mahmud, 2008, Pengantar Ilmu Hukum, Kencana, 2008, Jakarta Mertokusumo Sudikno, 2006, Hukum Acara Perdata Indonesia, Edisi ketujuh, Liberty, Yogyakarta
- Mu'adz Farid, 2006, Pengadilan Hubungan Industrial dan Alternatif Penyelesaian Perselisihan Hubungan Industrial di Luar Pengadilan, Jakarta
- Muhammad Abdulkadir, 2008, Hukum Acara Perdata Indonesia, PT.Citra Aditya Bhakti, Bandung
- Mulyadi Lilik, 2002, Hukum Acara Perdata Menurut Teori Dan Praktik Peradilan Indonesia, Djambatan, Jakarta
- Nasir Muhammad, 2003, Hukum Acara Perdata, Djambatan, Jakarta
- Nasution Muhammad Ali Syukri Albani, 2015, Filsafat Hukum Islam, Rajawali Press, Jakarta
- Oeripkartawinata Iskandar dan Sutantio Retno Wulan, 1995, Penelitian Tentang Perlindungan Hukum Eksekusi Jaminan Kredit, Badan Pembinaan Hukum Nasional Departemen Kehakiman, Jakarta
- Oeripkartawinata Iskandar dan Retnowulan, 2009, Hukum Acara Perdata dalam Teori dan Praktek, Mandar Maju, Bandung
- Pangaribuan Juanda, 2010, Tuntunan Praktis Penyelesaian Perselisihan Hubungan Industrial Edisi Revisi, Bumi Intitama Sejahtera, Jakarta
- Rahardjo, Satjipto, 2000, Ilmu Hukum , PT. Citra Aditya Bakti, Bandung
- _____, 2003, Sisi-Sisi Lain dari Hukum di Indonesia, Kompas, Jakarta
- Rahayu, 2009, Pengangkutan Orang, etd.eprints.ums.ac.id. Peraturan Pemerintah RI, Nomor 2 Tahun 2002 Tentang Tata Cara Perlindungan Korban dan Saksi Dalam Pelanggaran Hak Asasi Manusia Yang Berat Undang-Undang RI, Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga
- Ramli Lanny, 2008, Hukum Ketenagakerjaan, Airlangga University Press, Surabaya
- Rasjidi Lili, 1994, Filsafat Hukum mazhab dan refleksinya, Remaja Rosdakarya Offset, Bandung

- Salam Moch. Faisal, 2009, *Penyelesaian Perselisihan Hubungan Industrial di Indonesia*, Mandar Maju, Bandung
- Samosir Djamanat, 2011, *Hukum Acara Perdata, Tahap-Tahap Penyelesaian Perkara Perdata*, Nuansa Aulia, Bandung
- Setiono, 2004, "Rule of Law": Disertasi S2 Fakultas Hukum, Universitas Sebelas Maret, Surakarta
- Subekti.R, 1989, *Hukum Acara Perdata*, Binacipta, Bandung
- Sujayadi, S.H., dan Sugeng Bambang, A.S., S.H., M.H. dan 2012, *Pengantar Hukum Acara Perdata dan Contoh Dokumen Litigasi*, Edisi Pertama, Prenada Media, Jakarta
- Sutedi Adrian, 2006, *Hukum Perburuhan*, Sinar Grafika, Jakarta
- Suyuthi Wildan, 2004, *Sita Eksekusi-Praktek Kejurusitaan Pengadilan*, Tatanusa, Jakarta
- _____, 2005, *Sekitar Hukum Acara dan Hukum Perdata*, Pusdiklat Pegawai Mahkamah Agung RI, Bogor
- Tjandra Surya, 2007, *Praktek Pengadilan Hubungan Industrial Panduan Bagi Serikat Buruh*, Trade Union Right Centre, Jakarta
- Wijayanti Asri, 2013, *Hukum Ketenagakerjaan Pasca Reformasi*, Sinar Grafika, Jakarta

PERATURAN PERUNDANG-UNDANGAN :

Kitab Undang-Undang Hukum Perdata/Burgerlijk Wetboek (Staatsblad Tahun 1847 Nomor 23

HIR (*Het Herziene Indonesische Reglement*) atau Reglement Indonesia Baru (Staatsblad Tahun 1984 Nomor 16, yang diperbaharui dengan Staatsblad 1941 Nomor 44), berlaku untuk Jawa dan Madura

RBg (*Rechtsreglement Buitengewesten*) atau Reglemen untuk daerah seberang (Staatsblad Tahun 1927 Nomor 227), berlaku untuk daerah luar Jawa dan Madura.

Rv (*Reglement Op De Rechtsvordering*), Staatsblad Tahun 1847 Nomor 52

Undang-Undang Nomor 2 Tahun 2004 tentang Penyelesaian Perselisihan Hubungan Industrial, (Lembaran Negara Republik Indonesia Tahun 2000 Nomor 131)

Undang-Undang Nomor 3 Tahun 2013 tentang Ketenagakerjaan, (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 39)

Undang-Undang Nomor 11 tahun 2020 tentang Cipta Kerja, (Lembaran Negara Republik Indonesia Nomor 6573)

Undang- Undang Nomor 29 tahun 2004 tentang Praktik Kedokteran,
(Lembaran Negara Republik Indonesia Tahun 2004 Nomor 116)

Undang-Undang Nomor 44 tahun 2009 tentang Rumah Sakit, (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 153)

Undang-Undang Nomor 36 tahun 2009 tentang Kesehatan, (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 1441)

Peraturan Pemerintah Nomor 35 tahun 2021 tentang perjanjian kerja waktu tertentu, alih daya, waktu kerja dan waktu istirahat dan pemutusan hubungan kerja

Keputusan Direktur Jenderal Badan Peradilan Umum Mahkamah Agung Republik Indonesia Nomor : 40/DJU/SK/Hm.02.3/1/2019 tanggal 11 Januari 2019, tentang Pedoman Eksekusi Pada Pengadilan Negeri

PUTUSAN :

Putusan Pengadilan Hubungan Industrial pada Pengadilan Negeri Gresik Nomor 17/Pdt.Sus-PHI/2021/PN.Gsk, tanggal 10 Juni 2021.

WEBSITE/JURNAL :

Fara Divana, 19 Juni 2015, Pelaksanaan Eksekusi Dalam Perkara Perdata di Pengadilan Negeri Pamekasan,
<http://Karyailmiah.um.ac.id/index.php/PPKN/article/view/6210>.

Hasanah, Sovia, 2017, "Penyelesaian Perselisihan Hubungan Industrial",
www.hukumonline.com,

Tarsi, Eksekusi-Eksekusi antara Teori dan Praktik dalam Hukum Perdata,
<https://papalembang.go.id/2020/04/27/eksekusi-antara-teori-dan-praktik-dalam-hukumperdata>, diakses 25 Oktober 2021.

Memahami Kepastian (Dalam) Hukum,
<https://ngobrolinhukum.wordpress.com/2013/02/05/memahami-kepastian-dalamhukum/>