

An Analysis Of The Regulations For Execution Of Industrial Relations Courts: Case Study Of Non-Compliant Company In Indonesia

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ABSTRACT

There are a variety of regulations and laws that govern industrial relations disputes, including those involving rights, interests, terminations of employment, and disputes among unions within a company. Nevertheless, if the working relationship between employees/laborers and employers does not always run smoothly, there could be disputes over layoffs or terminations of employment. There have been cases in Indonesia where several companies have not complied with the rules following the termination of their employees. Employers need to implement pristine PHI (Industrial Relations Court) decisions for workers to be able to exercise their rights. The purpose of this study is to intend to explore and analyze the concept of procedural law in the context of implementing collective agreements in Indonesia. This study applies a legal empirical approach to figure out how to resolve legal issues. Conducted using both primary and secondary legal materials including The Constitution of 1945, the Civil Code, and the Republic of Indonesia Law are among the primary sources used in this study. Furthermore, for harmonious industrial relations to be achieved, the government needs to establish normative regulations through laws and regulations that will allow them to function in harmony.

Keywords: legal certainty; termination of employment; employer; worker/employee, Industrial Relations Court decisions;

I. Introduction

As stated in the 1945 Indonesian Constitution (UUD NRI 1945), "every citizen has a right to work and a decent standard of living for humanity". As part of the process of performing a job, an

employment relationship is established between the worker or labor and the entrepreneur through the completion of a work agreement that contains elements such as work, wages, and orders (Darma, 2017). The employment relationship

refers to the relationship that exists between the employee and the employer as a result of the employment contract. Fundamentally, workers' and laborers' rights are the obligations of entrepreneurs, and conversely, entrepreneurs' rights are the obligations of workers and laborers (Widyorini & WL, 2022).

Human relations are always subject to disputes or disagreements. Although the legal subject is a human being as well as a legal entity, there are still many parties involved. There is an increasing complexity in society, which leads to a broader diversity of incidents and disputes. Industrial relations disputes are frequently a concern in labour law because of the complexity of society. An industrial relations dispute usually arises between employees and their employers. Regulations and laws govern various types of industrial relations disputes, such as disputes over rights, interests, terminations of employment, and conflicts between unions within the same firm. The most significant factor in resolving disputes is how they will be resolved in a fair and objective manner among the various types of disputes (Gaffar, Karsona, Pujiwati, & Perwira, 2021; Husni, 2000).

However, if the working relationship between workers/laborers and employers does not always run smoothly, there may be disputes regarding layoff or termination of employment (PHK). In some cases, the termination of employment (PHK) by employers has led to mass layoffs. In order for companies to survive, they must terminate their employees (Rahimy, 2021). According to the Indonesian Law of Industrial Relations Disputes No. 2 of

2004 (PPHI Law), this term is defined (Hanifah & Purba, 2021). Based on PPHI Law, the dispute resolution process aims to achieve a win-win outcome for both workers and employers. In order to resolve disputes, a third party will be involved (conciliation, mediation, or arbitration). Further, a dispute may be settled by the Industrial Relations Court if the parties cannot resolve it.

The existence of the PPHI Law should be able to settle industrial relations disputes effectively (Putri, Fakhriah, Karsona, & Afriana, 2021). Nevertheless, industrial relations disputes have not been able to be settled in a manner that meets the expectations of the parties in practice. Since the problems of industrial disagreements have increased and become more complex during the current era of industrialization, it is hoped that the mechanism for resolving these disputes can be carried out rapidly, precisely, simply, and at a low cost. The settlement of industrial relations disputes involves a variety of challenges, including the execution of the decisions reached in the dispute (Putri et al., 2021).

Based on the data of Indonesia Ministry of Manpower, job terminations or layoffs have declined in Indonesia since 2014. In 2018, 3.4 thousand workers were released, which represents a 95.67 percent decrease in the number of workers released. Nevertheless, this number increased to 45 thousand releases in 2019. The number of layoffs also increased to three million. It is the consequence of the COVID-19, which has been affecting the world since the beginning of 2020 (Gaffar et al., 2021).

One of the decision cases number 2/Pdt.Sus-PHI/G/2016/PN.Smg, the

Workers/Laborers of PT. TRI ABADI PURNAMA, as Plaintiff, has filed a Dispute for Termination of Work to PT. TRI ABADI PURNAMA as a Defendant with the argument that the Defendant's dismissal was invalid, null, and void and requested the Panel of Judges of the Industrial Relations Court at the Semarang District Court to re-employ the Worker/Plaintiff in the Defendant's Company (Mashari & Suroto, 2022).

The absence of legal remedies that can force Employers to implement Decisions that have been *inkracht van gewijsde* shows that legal protection for Workers cannot be realized by the State as stipulated in Article 4 of Law Number 13 of 2003 concerning Manpower as amended by Law Number 11 of 2020 concerning Job Creation (Job Creation Law). Ultimately, the workers' victory is only a victory on paper, as they do not receive the rights to which they were entitled to, as determined by the decision of the Industrial Relations Court (Mashari & Suroto, 2022).

Accordingly, the research questions can be formulated as follows:

- a. What is the reason why the Entrepreneurs have not been able to implement the decision of the Industrial Relations Court that was *inkracht van gewijsde*?
- b. What is the status of the execution of the decision of the Industrial Relations Court which has been used in the case of the *inkracht van gewijsde*?
- c. Which regulations govern the execution of Industrial Relations Court decisions that are not voluntarily implemented by employers?

2. Research Method

This study applies a legal empirical approach in order to figure out how to resolve legal issues. It is also important to examine cases relating to the present topic that have become decisions of industrial relations courts with permanent legal force (Marzuki, 2014). In the opinion of Marzuki (Gaffar et al., 2021; Marzuki, 2014), legal research is more of a knowledge based activity than simple activity in legal action. Legal research is a know-how activity that seeks to resolve legal issues. Different approaches are employed, including statutory, conceptual, case, and comparative approaches. Specifically, a legislative examination of the laws and regulations that pertain to the legal issues discussed. Researchers need to understand the *ratio decidendi* case approach as it pertains to the legal reasoning as a basis for the judge's decision (Gaffar et al., 2021). In the absence of evidence to the contrary, depending on the facts such as persons, places, and times, it may be possible to determine the legal reasoning behind the judge's decision.

The research was conducted using both primary and secondary legal materials. The Constitution of 1945, the Civil Code, and the Republic of Indonesia Law are among the primary sources used in this study. A number of laws and regulations are relevant to the issues discussed. These include Law 40 of 2007 concerning limited liability companies, Law 13 of 2003 concerning manpower, and Law 2 of 2004 concerning industrial disputes. The secondary traditional materials include references that support primary conventional materials, such as textbooks, articles in magazines, and

scientific journals in the area of law (Gaffar et al., 2021).

3. Results and Discussion

3.1 The Industrial Relations Court Decision

If a person voluntarily does not follow the verdict, he is sentenced to a financial penalty as per Article 196 of the *Herzien Inlandsch Reglement (HIR)*. Upon confiscation of a guarantee before the decision is rendered, the confiscation becomes an executorial confiscation after the guarantee is declared valid and valuable. In addition, the judgment is carried out by auctioning the property of the defeated party in order to determine whether the amount is sufficient to be paid according to the judge's decision, as well as adding all costs associated with the implementation of the decision (Waluyo, 2002).

According to Article 1131 of the Civil Code, a confiscation of collateral is the seizure of the assets of a losing party in order to guarantee that a sum of money will be paid to the winning party (Wardani, 2021). In this case, all of the assets of the respondent or the losing party are fully guaranteed to cover payment of the debt by the winning party. In accordance with these provisions, confiscation of execution is a legal proceeding designed to ensure the reimbursement of debt payments by the winning party. As a result of the application of Article 208 *Rechtsreglement voor de Buitengewesten (RBg)* paragraph, the entire goods and assets of the losing party may be seized for security purposes (Ritonga, Fitriani, & Hendro, 2022).

Physical execution must be preceded by *aanmaning* (warning). An *aanmaning* is given to the losing party to get them to fulfill the contents of the court's decision voluntarily within a predetermined timeframe (Ritonga et al., 2022). Since, it may not have fulfilled the contents of the voluntary court decision due to negligence and indications of bad intentions from the losing party (entrepreneur) without any specific purpose. The research shows that *aanmaning* is one of the absolute requirements for the execution process to begin.

Without execution, *aanmaning* cannot be carried out. It is the responsibility of the Chairman of the district court to supervise the execution of the defendant (Ritonga et al., 2022). It can still be done by the deputy chairman of the district court, and in the absence of the deputy chairman of the district court, it can be done by the senior judge.

Accordingly, in accordance with Article 57 of the PPHI Law, when referring to the case of the Industrial Relations Court, the procedure for implementing the decision of the Industrial Relations Court is governed by the civil procedural law that applies to the general court (Ritonga et al., 2022; Shumylo, 2020). The execution of procedural rules regulated by HIR or RBg is an integral part of the implementation of those rules. Execution rules, which refer to laws and regulations in either the HIR or RBg, should be followed by all individuals interested in carrying out executions. It is evident that the losing party does not wish to comply with and fulfill the contents of the

decision voluntarily (Ritonga et al., 2022). After the warning grace period has expired, new court decisions can be implemented (Bachar, 2007).

As a result of losing the case, the losing party must incur execution costs, which are currently relatively high. As well as this, he/she must also bear a considerable moral burden. Upon the refusal of the losing party to comply with the contents of the interim decision of the Industrial Relations Court, the decision may be enforced by force. It should be noted however that not all decisions that are already in force must be implemented because what needs to be implemented are only punitive decisions (condemnatoirs), in which one of the parties is ordered to perform a certain act (Sutantio & Oeripkartawinata, 2007).

Based on an interview with Sudrajad Dimiyati (Dimiyati, 2022), the Chairperson of the Court may confiscate the Executed Respondent's assets in order to ensure that the decision will be executed with a permanent effect. In the absence of valuable assets, the execution respondent will become liable for the debt incurred by the decision. According to Article 1131 of the Civil Code, execution can occur when the entrepreneur has sufficient assets to meet his obligations (Simorangkir, 2021). There are no limitations on the type of property that can be pledged as a guarantee for all the debtor's obligations, regardless of whether the property is movable or immovable.

3.2 The Settlement of Industrial Relations Court Dispute Cases in Indonesia

3.2.1 The Settlement of Industrial Relations Disputes at the Central Jakarta District Court

The Industrial Relations Court (PHI) carries out the mechanism for resolving industrial relations disputes through the courts, a special court in the general court environment. Litigation settlement is used because it is assumed that litigation settlement can be quickly, accurately, cheaply, and somewhat to resolve problems. This settlement is an uncompromising way of settling so that it can cause injury to the litigants. Therefore, a good instrument is needed to support it both administratively and in terms of the apparatus, so there is a need for improvements in the law because the PPHI Law has been effectively enforced since 2006 (Yowana, Fadli, Permadi, & Santoso, 202 C.E.).

Letter of application by the Head of the District Court to reprimand the defeated Party to implement the Decision. This reprimand process is carried out officially at the Court Office, which is attended by the defeated party, the won party, and the District Court head. Suppose the losing party is willing to implement the decision after being reprimanded. In that case, the case is over if the party who has been reprimanded is still not ready to implement the Decision.

The winning party must submit an Application for Confiscation and proceed with an auction execution to the Head of the

District Court. Based on the request from the winning party, the Head of the District Court will appoint a bailiff who will be in charge of the

confiscation and auction of the assets of the defeated party, as shown in the Table 1 below (PHI Central Jakarta District Court, 2021).

Table 1 Decisions of the Industrial Relations Court at the Central Jakarta District Court that have not yet been executed

No.	Year	PHI verdict	Termination of layoffs	Termination of layoffs can not be executed
1	2016	236	188	22
2	2017	753	602	21
3	2018	293	234	23
4	2019	431	344	32
5	2020	359	287	45
Total		2072	1655	143

According to the table above, there are 2072 PHI decisions, 1655 dismissal decisions, and 143 dismissal decisions that have not been carried out (PHI Central Jakarta District Court, 2021). The researcher asserts that the Industrial Relations Court verdict at Central Jakarta District Court cannot be enforced because (a) the applicant did not file for execution since he was unaware of the assets being confiscated, and (b) the parties reached an agreement outside of court.

3.2.2 The Settlement of Industrial Relations Disputes at the Semarang District Court

The parties that have been defeated by the court can voluntarily enforce the court's rulings when they are implemented. In the event that the losing party does not comply with the court's decision, the process will take a

long time and will be very costly for both parties in terms of time, effort, and expenses. PPHI Law does not impose criminal sanctions on parties who fail to comply with PHI decisions, whereas Law No. 22 of 1957 does (Mashdurohatun & Leviza, 2019).

Consider the case in which the defeated parties are willing to voluntarily implement the decision. Upon hearing the verdict, the parties may immediately implement the decision. Even so, suppose that the defeated Party is unwilling to voluntarily implement the decision. As a result, the winning party must apply to the Chairman of the Industrial Relations Court at the Semarang District Court for the implementation of the decision.

The confiscation application was continued with an auction and execution before the Chairman of the Semarang District Court. In response to the request of the

winning party, the Chairman of the Semarang District Court appoints a bailiff to confiscate and auction off the assets of the defeated entrepreneur as a replacement for

the implementation of the Decision, which is not implemented voluntarily.

Table 2 The Decision of the Industrial Relations Court at the Semarang District Court, which has not been executed

No.	Year	Termination of layoffs	Termination of layoffs	Termination of layoffs can not be executed
1	2016	77	77	14
2	2017	57	57	15
3	2018	38	38	14
4	2019	90	90	10
5	2020	83	83	49
Total		345	345	102

As shown in the Table 2 above (PHI Semarang District Court, 2021), there are 345 decisions regarding PHI, and 345 decisions regarding dismissals. Comparatively, 102 dismissal decisions haven't been executed. A lack of budget prevented the majority of the Industrial Relations Court verdicts at the Semarang District Court from being executed, according to the researcher, or the cost of the PHI case was sufficient only for the costs of filing the lawsuit up until the decision, but there were no execution costs (PHI Semarang District Court, 2021).

3.2.3 The Settlement of Industrial Relations Disputes at the Surabaya District Court

In the Surabaya District Court, the execution is carried out by the Chairperson, who reprimands the defeated party in order to ensure that the verdict is implemented

(Paramithasari & Badriyah, 2021). The reprimand procedure was conducted at the Surabaya District Court Office in the presence of both the defeated and winning parties, and it was overseen by the Surabaya District Court Chairperson. A case is considered closed if the defeated party agrees to implement the decision after being reprimanded. Assume that the party who has been reprimanded is still unwilling to implement the decision. In order to proceed with the auction, the winning party must submit an Application for Confiscation to the Chairman of the Surabaya District Court (Paramithasari & Badriyah, 2021).

Based on the request from the winning party, the Chairperson of the Surabaya District Court appoints a bailiff who will be tasked with making the confiscation and then auctioning the goods which are the assets of the defeated Parties as a

substitute for the implementation of the Decision which is not implemented voluntarily as shown in

the Table 3 below (PHI Surabaya District Court, 2021).

Table 3 The Decision of the Industrial Relations Court at the Surabaya District Court has not been executed

No.	Year	PHI verdict	Termination of layoffs	Termination of layoffs that have not been executed
1	2016	191	177	36
2	2017	155	132	20
3	2018	170	134	25
4	2019	160	141	16
5	2020	187	161	17
Total		863	745	114

According to the table above, there are 863 PHI decisions, and 745 dismissal verdicts (PHI Surabaya District Court, 2021). Comparatively, 114 dismissal decisions have not been implemented. It has been determined that the Industrial Relations Court decision at Surabaya District Court cannot be enforced due to (a) the assets confiscated for execution have been sold; (b) the company assets do not exist/cannot be found; and (c) the company has been closed.

3.2.4 The Settlement of Industrial Relations Disputes at the Medan District Court

Industrial Relations Court is a special court at the Medan District Court Class IA Special that examines and resolves cases involving legal relationships between an employer

and employee. There are elements of rights and responsibilities associated with the legal relationship between the Employer and the Worker/Laborer. The analysis of the legal relationship between employers and workers/laborers is one of the most important aspects of the development of the business world and the welfare of workers/laborers (Ritonga et al., 2022).

The winning party must submit an Application for Confiscation and proceed with the auction execution to the Medan District Court Chairman. To implement the Decision, the Chairman of the Medan District Court appointed a bailiff to confiscate goods that were assets of the defeated parties, based on this request from the party that won (PHI Medan District Court, 2021).

Table 4 Decisions of the Industrial Relations Court at the Medan District Court that have not yet been executed

No.	Year	PHI verdict	Termination of layoffs	Termination of layoffs that have not been executed
1	2016	210	189	19
2	2017	289	241	28
3	2018	388	319	31
4	2019	337	307	22
5	2020	347	313	20
Total		1572	1369	120

According to the Table 4 above (PHI Medan District Court, 2021), there have been 1572 PHI decisions, 1369 dismissal decisions, and 120 dismissals that have not been executed. It is believed that the decision of the Industrial Relations Court at the Medan District Court cannot be enforced because: (a) the confiscated goods have not been found, and (b) the assets of the company have no longer existed.

As a result, several decisions have been made by the Chairman of the Central Jakarta District Court, the Chairman of the Semarang District Court, the Chairman of the Surabaya District Court, and the Chairman of the Medan District Court, which contain an order to confiscate the executions and are addressed to the clerks and bailiffs. There is no warning period required for the Head of the District Court to issue a warrant for the determination to carry out an execution confiscation. In the event that the respondent fails to appear at the summons, the execution is void. Clerks or bailiffs perform real and physical executions, while the Head of the District Court orders executions and supervises them.

3.3 The Executions in Other Country

Referring to the practice in Italy, asset tracking is possible through negotiations between the parties and the execution judge regarding the assets to be confiscated in the execution process. For that, the respondent must provide correct information regarding his assets. In tracing assets, bailiffs are authorized to access various electronic databases managed by the Government, including population databases, tax, finance, etc (Rumadan, 2020).

In practice in Germany, if the respondent has not paid a sum of money on the specified date, the bailiff will summon the respondent to attend the enforcement officer's office (Rumadan, 2020). The enforcement officer is authorized to reconcile the parties if the applicant and the respondent are present. If a peace agreement is reached, the implementation of the decision is carried out voluntarily and can be carried out at any time, for a maximum of 12 months. If a settlement is not reached, the respondent must provide information about the list of his assets and his finances. The enforcement officer can

immediately confiscate the defendant's goods. Suppose the respondent makes false information, is unwilling to provide information regarding his financial condition and assets or is not present after being summoned by the enforcement officer. In that case, the court will issue a detention order with the reasons. The detention can only be carried out for a maximum of 6 months, and after the expiration of the 6 (six) months, the debtor must be released *ex-officio*.

Practice in Italy and Germany shows that providing the respondent's asset information is essentially the responsibility of the respondent, not the applicant (Rumadan, 2020). This is understandable considering that the execution was carried out because the respondent did not want to make the decision voluntarily, so it must be given obligations that facilitate fulfilling the applicant's rights, including providing asset information. The applicant should not be burdened with the responsibility to trace assets considering that the execution process has hampered the quick and easy fulfillment of his rights under the law. The practice in Italy and Germany also shows that the court has the authority to trace the respondent's assets to check the integrity of the asset information provided by the respondent and/or if the respondent does not provide such information (Rumadan, 2020).

3.4 Regulations on the Execution of Industrial Relations Court

During the process of examining a case, the court may

choose to execute a judgment against the losing party in the case. Another meaning of executing a civil decision is enforcing a decision in a civil lawsuit by force in accordance with the applicable laws and regulations. This is because the party being sued does not intend to voluntarily implement the decision (Suyuthi, 2005).

The litigants submit cases, especially civil cases, to the court to resolve the problem and find legal certainty through court decisions. In principle, only decisions that have been *inkracht van gewijsde* can be implemented, namely court decisions that are *condemnatoir*, because decisions that have been *inkracht van gewijsde* contain a permanent and definite legal relationship between the litigants. *Amar*, characterized by *condemnatoir*, is simply an order that can be executed if the defendant is reluctant to comply with the verdict voluntarily. The legal action taken by the court against the losing party in a court decision is called execution (Arto, 1996).

In Article 57 of the PPHI Law, the procedural law that applies to the Courts of Industrial Relations (PHI) is the civil procedural law that applies to courts within the general court environment, except those specifically regulated in this law. This provision means confirming that the PPHI Law is a *Lex specialist derogate legi generalis* with the understanding that everything regulated explicitly in the requirements of the PPHI Law can override the provisions of the

procedural law that apply in general (Hanifah & Purba, 2021).

As Sudikno Mertokusumo (Mertokusumo, 2009) explains in his book *Civil Procedure Code*, legal regulations govern how judges are to ensure compliance with material civil law. A civil procedural law lays down the rules governing the implementation of material civil law. In civil procedure law, a claim for rights is filed, examined and decided upon, and the decision is implemented.

Various lawsuits with various disputes are handled by procedural law. According to the PHI, there are only four types of disputes: disputes over rights, disputes over interests, terminations of employment, and disputes between trade unions and labor unions within a company (Gaffar et al., 2021; Hanifah & Purba, 2021; Putri et al., 2021). Case limits for appeals and cassations are not specified in civil procedural law. There is a right of appeal for every disputing party if he is not satisfied with the decision of the judge.

The Panel of Judges who presides over the industrial relations trial in making decisions must consider the law, existing agreements, customs, and justice. The Panel of Judges is obliged to decide an industrial relations dispute, first to explore, follow and understand the legal values and sense of justice that live in a society so that the judge's decision will be following the law and justice in the community (Suyuthi, 2005).

Although the winning party has requested execution from the

Chairman of the PHI, the decision of the judge already has permanent legal force, and its contents are reemployment. The entrepreneur, however, does not wish to implement the decision of the judge, since the assessment factor from the entrepreneur to the worker/labor is already poor. A worker/laborer has been treated unfairly by the employer in this case (Mashdurohatun & Leviza, 2019).

An example is a case of the Industrial Relations Court Decision at the Surabaya District Court Number: 122/G/2007/PHI. SBY, Wednesday, 19 September 2007, between Salis (a worker, as the plaintiff) and PT. Indozing Diecastieng (entrepreneur as defendant). In this case, the entrepreneur (as the defendant) did not want to carry out the PHI's decision to re-employ workers. The Panel of Judges has tried to reconcile the two litigants but to no avail (Anjani, 2014).

Based on the provisions of Article 196, HIR regulates the implementation of decisions resulting from the actions of the defendant who did not voluntarily carry out the contents of the decision to pay a sum of money so that the plaintiff as the winning party applied orally or in writing to the Head of the District Court so that the decision could be executed. If the request for execution has been made and the employer still refuses to pay the severance pay, the worker can apply for an executive confiscation of the employer's property. The application for executive confiscation is still submitted to the Head of the District

Court. All goods are confiscated, then will be auctioned, the proceeds of which will be used to pay the employer's obligations to the workers and the costs incurred with the implementation of the decision (HIR, 1941).

The severance pay determined based on the Industrial Relations Court (PHI) decision, which has been *inkracht van gewijsde* will become the employer's debt and the workers' receivables (Rahimy, 2021). The worker's position is the creditor, while the entrepreneur is the debtor. The request for execution has been submitted, and the Employer still ignores it, then the debt of the Entrepreneur becomes collectible. Based on Law Number 37 of 2004 concerning Bankruptcy and PKPU, creditors can sue for a debtor's bankruptcy (Gaffar et al., 2021; Putri et al., 2021). The conditions must be that there is one debt due and can be paid, the debtor has two or more creditors, and the proof is simple.

4. Implementation

The implementation of the PHI decision, *inkracht van gewijsde* is not initiated by the employers voluntarily following Article 57 of the PPHI Law (Iskandar, Arif, & Simbayak, 2021). The PPHI Law does

not explicitly stipulate what legal remedies can be taken against the IRC decision that has been *inkracht van gewijsde*—referring to the applicable procedural law, namely the request for execution as regulated in Article 195 to Article 208 of HIR. According to article 195 paragraph (1) of the HIR, the execution must be carried out peacefully, and no one can delay it after it has been ordered to be executed. The implementation of the decision is overseen by the District Court Chief, who is examining the case in its initial stages (HIR, 1941).

A company is required to pay severance pay and/or service award money as well as compensation for entitlements that should have been paid in accordance with Article 156, paragraph (1) (Hamid & Hasbullah, 2021; Rahimy, 2021). Entrepreneurs are threatened with criminal sanctions if they do not meet these obligations, based on Article 185 paragraph (1). Criminal sanctions may range from a minimum one-year suspension to a maximum four-year suspension or may include fines ranging from IDR 100,000,000 (one hundred million rupiahs) to IDR 400,000,000 (four hundred million rupiahs), as shown in Table 5. (Hamid & Hasbullah, 2021; Industrial Relation Court, 2022).

Table 5 The Findings of Industrial Relations Court Decisions Which Are Not Implemented by Entrepreneurs

No	Problematic Article	Existing	Ideal
1	Article 1: Provisions	Regulations on the Execution of	In accordance with Law no. 11 of 2020 concerning job creation,

	governing the execution of Industrial Relations Court decisions	Industrial Relations Court Decisions that have been inkracht van gewijsde are not implemented by the Employer voluntarily.	regulations on the execution of Industrial Relations Court decisions need to be subject to criminal sanctions.
2	Article 103: Examination Period	The period of case examination at the PHI level follows the applicable procedural law.	The period of examination of cases at the PHI level follows the Procedural Law of Law no. 2 of 2004, which is 140 days must be completed if more than the specified time is subject to administrative sanctions.
3	Article 110: Level of Cassation	Cassation level to settle cases with lawsuit value less than and over 150,000,000 Indonesian Rupiahs (one hundred and fifty million rupiahs).	It is proposed that the cassation level be applied only to lawsuits with a value greater than IDR 150,000,000 (one hundred fifty million rupiahs).
4	Law no. 2 of 2004 regarding Settlement of Industrial Relations Disputes	In accordance with Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes, it is deemed necessary to become a priority for the National Legislation Program.	The law regarding the settlement of industrial relations disputes referred to in the Act has been revised. To achieve a fast, precise, fair, inexpensive, and efficient judiciary based on the values of Pancasila, the law is becoming increasingly comprehensive in order to reflect the ratio of legal certainty and justice.
5	Article 187 of Law no. 11 of 2020 regarding Job Creation	Law No. 11 of 2020 regarding Job Creation, In the absence of severance payments, entrepreneurs can be	According to Article 187 of Law Number 11 of 2020 concerning Job Creation, employers who fail to pay severance payments will be imprisoned for a minimum of

		imprisoned for a minimum of one (1) year and a maximum of four (4) years and/or fined at least IDR 100,000,000 (one hundred million rupiahs) and IDR 400,000,000 (four hundred million rupiahs).	one year and a maximum of four years. As a result, employees report employers to the State Police of the Republic of Indonesia, and these reports are not followed up as there are no implementing regulations. In order to investigate criminal acts in Manpower, regulations for police guidelines must be implemented.
6	Execution costs are not enough sustainable budget	Article 58 of Law Number 2 of 2004 regarding the settlement of industrial relations disputes regarding execution costs.	Article 58 of Law Number 2 of 2004 regarding the settlement of industrial relations disputes regarding execution costs must be borne by the losing party, regulatory improvements.
7	Law No. 2 of 2004 regarding settlement of Industrial Relations Disputes	There is no regulation regarding the procedure for executing industrial relations court decisions under Law No. 2 of 2004.	In accordance with UU no. 2 of 2004 concerning the Settlement of Industrial Relations Disputes, arrangements for the execution of industrial relations court judgements must be contained.
8	PERMA No. 1 of 2000 related to gijzeling (corporate forced)	SEMA No. 1 of 2000 concerning Gezeling (corporate forced) for Entrepreneurs who do not carry out executions which have permanent legal effect (inkracht van gewijsde)	A business owner who fails to execute is considered "bad." A business owner who has a permanent law (inkracht van gewijsde) is subject to gijzeling (corporate forced) sanctions

9	In accordance with HIR Article 121 paragraph (1) and RBg. According to Article 145 paragraph 4, execution costs	HIR Article 121 paragraph (1) provides that execution fees are paid to the execution applicant on the understanding that execution costs also include a series of court costs inseparable from the execution process.	In accordance with HIR Article 121 paragraph (1), execution fees must be paid in priority to workers as applicants for execution, on the assumption that execution costs are a component of court fees.
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A review of the research findings in the table above indicates that based on the provisions of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, the execution of the IRC decision, which has legal force, is lacking legal certainty (Industrial Relation Court, 2022). This is due to the fact that the procedure for executing the IRC decision is not regulated. The settlement is submitted to the execution procedures for the Herzien Inlandsch Reglement (HIR) and Rechtsreglement voor de Buitengewesten (Rbg) (HIR, 1941).

In accordance with Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, there is no regulation regarding the procedure for the execution of industrial relations court judgements (Yowana et al., 202 C.E.). The Industrial Relations Law Number 2 of 2004 is required to include provisions for executing decisions at the Courts of Industrial Relations (PHI) (Yowana et al., 202 C.E.). In addition, entrepreneurs who do not execute industrial relations court decisions that have been *inkracht van gewijsde* are proposed to be subject

to *gijzeling* (corporate forced) sanctions (Savitri & Santoso, 2021).

As a result of Law Number 11 of 2020 regarding the Job Creation Law, in Article 156 paragraph (1) employers are required to pay severance pay and/or service award money as well as compensation for rights that should be received based on Article 156 paragraph (1) of the Job Creation Law (Rahmatsyah, 2019). According to Article 185 paragraph (1) of the Job Creation Law, entrepreneurs who fail to make severance payments are subject to criminal sanctions for a minimum of 1 year and a maximum of 4 years or a fine of at least IDR 100 million and a maximum of IDR 400 million (Hamid & Hasbullah, 2021).

Indonesia's Supreme Court has issued regulation number 1 of 2000 concerning *gijzeling* (corporate forced) for entrepreneurs who do not carry out executions that are legally binding (*inkracht van gewijsde*). Entrepreneurs who do not carry out executions (“bad” entrepreneurs who have *inkracht van gewijsde* are subject to *gijzeling* (corporate coercion) sanctions to parties who do not carry out

collective agreements or verdicts (Siregar, Ginting, Sikumbang, & Ramadhan, 2019).

When the PHI that has been *inkracht van gewijsde* is not implemented by the entrepreneur, internal factors influence the decision, including the workers/laborers not receiving severance pay in the form of a grant (won) amount of money that the entrepreneur is required to pay in accordance with a court order (Siregar et al., 2019). The applicant does not receive suspension wages as part of his rights. Meanwhile, external factors include: the object of execution is unclear or has changed; execution fee will be paid from the sale of goods resulting from execution confiscation basically cannot apply to real execution financing; the entrepreneur does not comply with the contents of the PHI decision which remains *inkracht van gewijsde*; people's attitudes towards law and the legal system include beliefs, values, thoughts, and social forces; the civil procedural law that applies at the Courts of Industrial Relations (PHI) is the procedural law in general, making its execution difficult (Putri et al., 2021; Wardani, 2021). Ideally, in the future, the PHI should be able to reflect the ratio of the legislature of legal certainty and justice to realize the principles of a fast, precise, fair, and inexpensive judiciary based on the values of Pancasila.

According to article 156 paragraph (1) of Law Number 11 of 2020 concerning the Job Creation Law concerning Employers, employers may be subject to criminal sanctions. The company must also pay severance pay and/or service fees in addition to compensating for rights that

should be received (Rahmatsyah, 2019). In addition, entrepreneurs who do not pay severance pay are subject to criminal penalties for a minimum of 1 year and a maximum of 4 years or to a fine of at least IDR 100 million and a maximum of IDR 400 million under Article 185 paragraph (1) of the Job Creation Law. Assisting the Indonesian National Police in processing criminal acts arising from law number 11 of 2020 regarding the Employment Creation Law for losing parties who do not pay severance pay to their employees by implementing regulations as guidelines (Hamid & Hasbullah, 2021).

5. Conclusion

In conclusion, an entrepreneur who fails to comply with an industrial relations court decision that has been *inkracht von gewijsde* should be punished criminally, including imprisonment. The Industrial Relations Court may issue a criminal sanction for failure to implement the decision of the Industrial Relations Court which has been *inkracht van gewijsde*, who may be subject to *gizeling* (corporate forced sanctions) as mentioned previously in accordance with PERMA Number 1 of 2000. Accordingly, SEMA Number 2 of 2019 indicates that the company may be bankrupt.

All industrial relations settlements conducted by the industrial relations court have involved the problem of rights, conflict of interest, terminations of businessmen, and disputes between unions within a single company. To resolve industrial relations disputes, mediation should be used, because it can be more effective and quicker than a court proceeding. Disputes involving industrial relations are difficult to resolve, due to the fact that in the court of

industrial relations takes a considerable amount of time. For an Industrial Relations Court to become stronger, a concrete effort must be to achieve rapidity, simplicity, and low-cost. This will ensure that litigants can obtain justice.

6. Suggestion

In order to achieve harmonious industrial relations, the government must establish normative regulations through laws and regulations. These regulations may provide clarity regarding the implementation of salary payment and suspension periods by employers to workers/laborers during termination of employment. This will lead to harmonious industrial relations.

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