

IDEAL RECONSTRUCTION OF PROTECTION FOR LAYOFF VICTIM AT THE INDUSTRIAL RELATIONS COURT BASED ON JUSTICE

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Abstract: *Industrial arbitration formed in general aims to find out a compromise that will win a big consensus. The involvement of the employer and the court in a special relations court continues the belief in the ideology of liberal democracy that there will be values that go beyond and are above the conflicting social groups. The approach method used in this paper was an empirical juridical method. It started by analyzing labor regulations in relation to decisions on layoffs by the Industrial Relations Court. The result of the research found that factors that hinder the provision of protection for laid-off workers based on justice in Industrial Relations Dispute Settlement in Medan City, among others due to: Legal factors, namely the rule of law which regulates industrial relations there are still elements of weakness, among others due to legal norms that have not complete, lead workers/laborers to litigate in the IRC, Civil Procedure law in the IRC, the nature of passive IRC judges, high costs, time problems, disconnection of information on the IRC process.*

Keywords: *Reconstruction, Protection, Layoff Victims, Justice*

Introduction

Industrial arbitration formed in general aims to find out a compromise that will win a big consensus. The involvement of the employer and the court in a special relations court continues the belief in the ideology of liberal democracy that there will be values that go beyond and are above the conflicting social groups. ¹

¹ Rita Olivia Tambunan, 2008, *Pengadilan Hubungan Industrial di Indonesia beberapa Catatan*, Jakarta, Trade Union Centre, page1.

Judiciary and councils are seen as referees or supervisors of the rules of the game and are seen as guards who are neutral in the interests of the community as a whole so that Otto Khan Freud is pessimistic about the neutrality of the industrial relations court.²

As someone who was asked as the Father of Labor Law, Otto said:

It is possible to legalize the class system in a class divide society to make it a component of the legal system? Can the state recognize the idea of class and yet remain "neutral", must the conflict eventually break up the legal system or legal suppressed the conflict? (free translation: is it possible to legalize the class system and make it a component of the legal system? Can the state recognize thinking about the class but remain neutral? Should not the conflict ultimately destroy the legal system or legal system that represses conflict?³

The politics of labor law adhered to by the pro-investment⁴ government so that finally on January 14, 2006, effectively enacted Law No. 2 year 2004 concerning Industrial Relations Dispute Settlement, or exactly since the 2 (two) years of promulgation of Law No.2-year 2004. Industrial relations disputes and labor dispute settlement systems in Indonesia have entered a new phase.

Before the economic crisis in 1996, in an evaluation of Indonesian labor law, the World Bank stated that: the (Indonesian) workers are overtly protected and the Government should stay out of the industrial dispute. This statement was issued by the World Bank to create harmonization of industrial relations between workers and employers (industrial harmony between workers and employers), related to the increasing instability of labor in this country which they say is not profitable for business and investment.⁵

The case of workers' strikes shows that industrial relations failures are like some physical facts which show that the implementation of freedom of association through Labor Unions has not been able to create harmonious industrial relations in Indonesia. This can be read from the large number of works strikes from 2003 to 2010, as follows: in 2003 a total of 248 strikes, in 2004 as many as 356, in 2005 as many as 27, in 2006 as many as 127, in 2007 as many as 275, in 2008 as many as 79 strike, in 2009 totaling 207 and up to July 2010 there were 53 strikes.⁶

Even based on data from the Ministry of Manpower, the number of workers laid off was 3,795 until March 2016. The rationalization was carried out by companies engaged in various sectors. The biggest details are in the agriculture and fisheries sector with the number reaching 1,172 workers. Other sectors followed by laying off 1,142, and third place in the trade, services and investment sector with 697 workers laid off. While in the financial sector, the number of employees who were laid off was 59 people. In mining as many as 231 workers, then 109

² Ibid.

³ Ibid. see also Surya T. Tjandra (koordinator), 2007, *Praktek Hubungan Industrial Panduan Serikat Buruh Buku Manual 3*, Trade Union Centre, Jakarta, page ix.

⁴ Surya T. Tjandra dan Jafar Suryamenggolo, (Penyunting), 2006, *Makin Terang Bagi Kami Belajar Hukum Perburuhan*, Trade Union Centre, Jakarta, page xix.

⁵ Ibid.

⁶ Report of the Director General of Ministry of Manpower Development and Supervision 2005-2010, [http: www.nekertrans.go.id](http://www.nekertrans.go.id). 12 Pebruari 2011, sebagaimana dikutip dari Gunarto, *Rekonstruksi Konsep Kebebasan Berserikat Melalui Serikat Pekerja pada Hubungan Industrial Berbasis Nilai Keadilan Menuju Kesejahteraan Pekerja*, Ringkasan Disertasi Program Doktor Ilmu Hukum Universitas Diponegoro, Semarang, 2011, page4

workers were laid off for the infrastructure, utilities and transportation sectors. Furthermore, in the various basic chemical industries, the number of layoffs reached 253 employees.⁷

Based on data from the Director of Settlement of Industrial Relations Disputes at the Ministry of Manpower, the highest contributors to layoffs were Maluku Province with 3,740 workers. The following are the data on the dismissal of each Province throughout 2016, namely:⁸

1. North Sumatra as many as 454 workers
2. West Sumatra as many as 63 workers
3. Jambi as many as 779 workers
4. South Sumatra as many as 95 workers
5. Bengkulu as many as 18 workers
6. Lampung as many as 1 worker
7. Bangka Belitung as many as 131 workers
8. Riau Islands as many as 108 workers
9. DKI Jakarta as many as 1,048 workers
10. West Java as many as 26 workers
11. Central Java as many as 136 workers
12. Yogyakarta as many as 13 workers
13. East Java as many as 210 workers
14. Bali as many as 41 workers
15. West Nusa Tenggara as many as 60 workers
16. West Kalimantan as many as 1,294 workers
17. Central Kalimantan as many as 181 workers
18. South Kalimantan as many as 322 workers
19. East Kalimantan as many as 2,652 workers
20. North Sulawesi as many as 1,076 workers.
21. South Sulawesi as many as 174 workers
22. Southeast Sulawesi as many as 61 workers
23. Gorontalo as many as 48 workers
24. West Sulawesi as many as 48 workers.

Based on these data, it can be seen that there has been an unharmoniously relationship between workers and employers that finally the settlement was carried out in the Industrial Relations Court and the role of the Court became the last bastion for the parties to seek justice.

Research Methods

Based on the problems previously stated above, the approach method used in this paper was an empirical juridical method. For obtaining primary data, it started by analyzing labor regulations in relation to decisions on layoffs by the Industrial Relations Court.

Data collection technique was done through literature study and field research. For literature study, the media used to collect data in this study include books, legislation, journals, papers, and supporting literature. Whereas in conducting field research, the tool used to collect data is to use interview guidelines that make a list of both structured and unstructured questions were be submitted orally and in writing to the respondents and resource persons. Analysis of data in this study used qualitative data analysis. with the following rareities: Announcement of data through library research techniques including inventory of positive laws and interviews,

⁷[http://bisnis.liputan6.com/read.kemenaker: 3.795 karyawan kena PHK di kuartal I 2016.](http://bisnis.liputan6.com/read/kemenaker:3.795-karyawan-kena-PHK-di-kuartal-I-2016)

⁸<http://bisnis.liputan6.com2824/ini-propinsi-penyumbang-phk-paling-banyak-di-2016>, downloaded on 6 March 2017.

Conducting primary data and secondary data in certain groups formulation of the problem:
Conducting abstract analysis to draw principles or concepts that are more than primary data and data
Secondary: Grouping concepts in predetermined categories: Searching for relationships between concepts and interpretations and using relevant theories to explain the relationship between concepts: Drawing conclusions in a deductive/inductive way.

Research Results and Discussion

Factors that Inhibit the Provision of Protection to Workers Victims of Termination of Employment

Justice is a hope that must be fulfilled in law enforcement. Based on its characteristics, justice is subjective, individualistic and does not generalize. If law enforcement focuses on the value of justice, the value of legal benefit and certainty is ruled out, then the law cannot work properly. Likewise, on the contrary, if it focuses on the value of usefulness while legal certainty and justice are ruled out, then the law does not work. Ideally, in upholding the law the basic values of justice which are the basic values of philosophy and basic values of benefit are a sociologically valid unity, as well as the basic value of legal certainty which is a juridically unified entity that must be applied equally in law enforcement.

Interesting things that need to be observed if there are 2 (two) elements that are of mutual interest between Justice and Legal Certainty, Roeslan Saleh stated:⁹

"Justice and legal certainty are two legal objectives that are often not in line with each other and difficult to avoid in law practice. A rule of law that fulfills more demands for legal certainty, the greater the likelihood of justice aspects being pushed. The imperfection of this legal regulation in practice can be overcome by giving an interpretation of the rule of law in its application to concrete events. If in its application in a concrete event, justice and legal certainty are mutually urgent, then the judge must, as far as possible, prioritize justice over legal certainty".

The Roscoe Pound as one of the legal experts in the School of Social Jurisprudence is famous for his theory states that, "the law is a tool to renew (engineer) society (law as a tool of social engineering)¹⁰". This is what rejects the thoughts of Satjipto Raharjo by stating:

"That the law is for humans, grip, optics or basic beliefs, does not see the law as a central law, but people are at the center of the law. The law revolves around humans as its center. Law exists for humans, not humans for law."¹¹

Thus, the position of justice is a very important element in law enforcement in Indonesia. Indonesia has a diverse culture of culture and has a noble value, of course, really expect justice and expediency that is put forward compared to the element of legal certainty. Justice is the essence of the law, so law enforcement must also realize this. Besides legal certainty and justice, another element that needs to be considered is the benefits.

Use in law enforcement is something that cannot be released in measuring the success of law enforcement in Indonesia. According to the Utilitarianism stream, law enforcement has a purpose based on certain benefits (the theory of benefits or theory of purpose), and not just to

⁹Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Saptartha Jaya, 1996), page 114.

¹⁰Ahmad Rifai, *Penemuan Hukum oleh Hakim, Dalam Perspektif Hukum Progresif*, Jakarta: Sinar Grafika, 2010, page 30.

¹¹Abdul Halim, *Teori-teori Hukum Aliran Positivisme dan Perkembangan Kritik-kritiknya* dalam Jurnal Asy-Syir'ah Vol. 42 No. II, 2009, page. 390. Accessed from www.google.com pada 14 April 2012.

repay the criminal act, not just to retaliate or compensate the person who commits a crime but has certain useful purposes.¹² Benefits here are interpreted as happiness. Good law is a law that gives happiness to many people.

This is confirmed by the opinion of Jeremy Bentham, that:

"The sentence must be specific to each crime and how hard the crime must not exceed the amount needed to prevent certain attacks. Criminal punishment can only be accepted if it gives hope for the prevention of greater crime".¹³

So, if you look at the ideal thing based on the 3 (three) elements/objectives of law enforcement that have been stated above, law enforcement in Indonesia tends to prioritize legal certainty. Harmonization between elements which is expected to be able to complement each other is very difficult to implement in Indonesia. Law enforcement officials tend to have a view, the law is legislation and prioritizes formal legal in addressing phenomenal societies.

Based on legal protection for victims of layoffs, there are various factors that hinder the provision of protection for workers who are laid off based on justice in the settlement of industrial relations disputes in the city of Medan, among others.

Entrepreneurs Factors

The Labor Union found that employers themselves did not want a mediation process, because the principle of the employer could be made in the length of the process. Why should it be made quickly? On the contrary, entrepreneurs are so easy to do layoffs, but employers do not want to issue severance pay, or pay minimum workers severance payment.¹⁴

The findings of BPHN in addition to the above factors have not been supported by the enthusiasm of the parties to be consistent with the applicable laws, among others it is due:¹⁵ There is a tendency that entrepreneurs in the context of seeking profit (profit motive) lack attention to the interests of workers/laborers.¹⁶ As a result, only certain workers (have expertise) who get decent wages and facilities, but the rest of the ordinary workers tend to be abandoned. The things that become the background to profit motive thinking patterns include:

- a. Although the current situation in general does not appear to be exploitation, however, it is important to realize that social phenomena indicate that disputes of interest between workers and employers based on the existence of quasi interventions continue. Emphasis on interests appears in the rules of material law as well as formal law.¹⁷
- b. In industrial relations the employer in a decisive position, and theoretically the rule of law tends to be used as a tool to promote his interests. The lively work relationship with "out sourcing" and the extension of the work contract continuously is a phenomenon that is

¹²Syaiful Bakhri, *Pidana Denda Dan Korupsi* (Yogyakarta: Total Media, 2009). page 129.

¹³Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2006), page. 275.

¹⁴Interview with Bambang Hermanto, Advocate and chief of DPC SBSI 1992 Kab. Deli Serdang, committee of SBSI 1992 Kabupaten Deli Serdang, 26 Mei 2017.

¹⁵Ade Suherman dkk, *Laporan Akhir Penelitian Penyelesaian Perselisihan Hubungan Industrial*, BPHN, Jakarta, 2010, page 97-98.

¹⁶Even Apindo DPN considers that the increase in minimum wages is contrary to employment, business survival and causes unemployment, see <http://www.apindo.or.id/menu3-berita>.

¹⁷Many companies that laid off workers refused calls for a number of reasons, moved addresses and even the company bankrupted itself so that the normative rights of the workers could not be fulfilled., Interview with Ifan Suwandi, Committee SBSI 1992 Kabupaten Deli Serdang, 26 Mei 2017

detrimental to the interests of workers/laborers who tend to be forced by employers, because it is perceived to be more profitable for employers.¹⁸

- c. There are still many companies that do not comply with the minimum wages set by the government that are still below the level of meeting basic needs.¹⁹

Workers Are in Depressed Conditions

There is a tendency about the difficulty of workers/laborers to get their rights according to the rule of law. The things that make workers/laborers not yet enjoy legal consistency are due to:

- a. The increase in the workforce is so heavy and the difficulty of the new workforce to obtain employment, giving entrepreneurs the opportunity to dominate the situation. Because it is easy to get new workers/laborers, if the workers are resigned or not ready to continue their work.
- b. Lack of knowledge of workers in terms of labor law/material labor law such as: determining the type of dispute; dispute settlement procedures; jurisprudence and others.²⁰
- c. Weak ability of workers/laborers in terms of technical trials (formal litigation) such as subject matter: composing a lawsuit; prepare evidence, prepare witnesses and others.²¹
- d. The judicial system, despite the existence of the Industrial Relations Court, is still not conducive in protecting the interests of workers.

The view of the Labor Unions think that the decisions imposed by the IRC(Industrial Relations Disputes) did not fulfill the sense of justice towards the victims of layoffs, because it is not always the answer to the problems that have been experienced by workers. IRC(Industrial Relations Disputes) actually produces layoffs for workers because with PHI, employers are increasingly laying off because employers know that the settlement of the Industrial Relations Disputes is long-winded and takes a long time.²²

Government Factors

The government tends to be ambivalent, not optimal to create social justice in the field of labor law²³. If the relationship between the worker and the employer is still left entirely to the parties (workers and employers), then the purpose of labor law to create social justice in the field of employment will be very difficult to achieve, because strong parties will always want to control the party weak (*homohominilupus*). Employers are very likely to control workers/laborers. For this reason, the government's anticipation of labor issues is clearly very necessary.

The function of the industrial relations dispute resolution institution is not yet optimal, for example:

¹⁸Trade unions argue that the status of contract labor is not guaranteed welfare, continuity of employment and is always made as to when it is necessary to use (Kaperle), Interview with Bambang Hermanto, Advokatt dan Ketua DPC SBSI 1992 Kab. Deli Serdang, Commitee SBSI 1992 Kabupaten Deli Serdang, 26 Mei 2017.

¹⁹ Erman Rajagukguk, *Hukum Ekonomi Indonesia: Menjaga Persatuan Bangsa, Memulihkan Ekonomi dan Memperluas Kesejahteraan Sosial*, dalam Jurnal Hukum Bisnis Vol. 22 No.5 Tahun 2003, yayasan pengembangan Hukum Bisnis, Jakarta, page25.

²⁰There were even workers who filed suit individually without being accompanied by an advocate because they did not have fees, but ultimately due to the lack of knowledge the lawsuit was rejected by the panel of judges, interview with Bambang Hermanto, Pengacara SBSI 1992 Kabupaten Deli Serdang, 26 May 2017.

²¹Workers do not have strong labor organizations that cannot fight for their rights, Erman Rajagukguk, *opcit*.

²²Interview with bambang Hermanto, advokat dan Ketua DPC SBSI 1992 tanggal 26 Mei 2017.

²³ Bappenas even in 2003 in the Labor Market Analysis Report argued that the increase in UMR needs to be reduced to not more than 4% and carried out every two years, see Surya Tjandra dan Jafar Suryamenggolo, "Sedar Bekerja" *Discussion Paper* No.1, TURC, 19 March 2004.

- a. Bipartite institutions are not as effective as expected, because employers (as strong parties) tend to see workers/laborers as factors of production, rather than seeing workers as citizens who must be considered humanely.
- b. Mediation institutions have not functioned properly, because mediators in carrying out their duties and functions are faced with constraints in the form of:
 - Parties who disagree primarily with employers tend to ignore mediation decisions.²⁴ Mediation decisions are only limited to recommendations that can be accepted or not so that mediation is only a tool for legality going to the IRC.²⁵
 - Law Number 2-year 2004 tends to lead cases to be processed in P.H.I (Industrial Relations Court).
 - IRC (Industrial Relations Court) has not functioned optimally, as expected, because the performance of the executors has not performed their duties and functions properly, due to:
 - a) Not as strict as the judges in the IRC from the influence of partiality or discrimination.
 - b) As an institution that is highly desirable for its services by the industrial community to realize a fair, fast and cheap justice system, but in fact it has not been supported by adequate operational facilities. Case trials by the Panel of Judges, led by career judges, are confronted with the fact that the proof of a case depends entirely on the litigant parties. Reality shows that entrepreneurs are far more skilled and have money to hire professional advocates. Not infrequently in IRC found for cases of layoffs of 1 (one) person, the employer hires 3 (three) advocates to fight workers/laborers.²⁶

Research by the National Development Planning Agency and the Van Vallonhoeven Institute that at least 5 (five) factors cause ineffective dispute resolution:²⁷

- a. Laws that are not yet clear
- b. Inadequate ability of the plaintiff's resources. In addition to the regulatory side that still has weaknesses, other factors that also influence the effectiveness of a litigation process are adequate or not the plaintiff's resources. Resources in this case are defined as financial capabilities, the ability to construct claims, the ability to provide evidence, and the ability to present expert witnesses.
- c. Inadequate ability of judges to decide cases;
- d. Legalistic judge behavior;

According to the ad hoc Judge of the Medan IRC, that the decisions they took were in accordance with the Supreme Court Circular and could not exceed the authority given because there were still legal remedies to the Supreme Court, whether cassation and review.²⁸

²⁴ In the view of the trade unions, that actually more workers prefer to mediate settlement than having to go to the PHI because the settlement through mediation, the problem can be quickly resolved and not protracted, but in fact many entrepreneurs do not accept the decision from mediation. interview with Ipan Suwandi, Committee SBSI 1992 Kabupaten Deli Serdang, 16 May 2017.

²⁵ Interview with bambang Hermanto, advocate and the chief of DPC SBSI Kabupaten Deli Serdang 1992 on 26 Mei 2017

²⁶ Even entrepreneurs from the beginning prefer to hire lawyers rather than pay the normative rights of workers at the time of mediation because if the workers win at the PHI there is still an appeal and reconsideration, interview with Ipan Suwandi, Committee SBSI 1992 Kabupaten Deli Serdang, 26 Mei 2017.

²⁷ file:///D:/New%20folder%20(9)/Local%20Disk/policy-brief-vvi-&-bappenas---efektivitas-penyelesaian-sengketa-lingkungan-hidup-di-indonesia---februari-2011.pdf

²⁸ Interview with Minggu Saragih, SH, MH, Budiyo dan Meilinus AGPH Gulo, hakim Adhoc PHI Medan on 17 March 2017.

- a. The judicial institution is not yet fully independent. Ideally, making decisions in court is a process of independent and neutral law enforcement, without any interference from any party. But it cannot be denied that the making of court decisions is strongly influenced by many factors, including political and social factors outside the court. In the current context, corruption, political pressure and media coverage are factors that influence the outcome of court decisions.
- b. Corruption in the court environment, including in making decisions, is difficult to prove. However, this can occur in the settlement of disputes as long as this is indicated by the contents of decisions and behavior of law enforcement, including judges.²⁹

The Jakarta Legal Aid Institute in the Industrial Relations Dispute Settlement Manual provides records of Industrial Relations courts³⁰ that are relevant to the results of this study, namely:

- a. Eliminate state intervention.
The Industrial Relations Court Law has eliminated state authorities to intervene in a labor union. This is in line with the liberal economic system and minimizes the role of the state and submits it to market mechanisms. Here the state only facilitates an IRC arena, which allows entrepreneurs and workers to fight, while the position of entrepreneurs and workers in an unbalanced.
- b. Transferring public law to people's law
In the past, Law No.22-year 1957 concerning Settlement of Labor Disputes and Law No. 12 year 1964 concerning Termination of Employment in Private Companies applies, when workers and employers are litigated, the mechanism adopted begins with efforts (negotiations). If the negotiations fail the parties or one of the parties will complain to the local Manpower Office in order to be brokered (mediated) by the relevant service staff. If the mediation fails, the service official automatically submits the dispute file to the Regional Labor Dispute Settlement Committee (P4D). P4D automatically submits disputes to the Central Labor Dispute Settlement Committee (P4P) for review. If there is an appeal or rejection of the P4D decision, P4P decision is binding. But for those who reject the P4P verdict, they can file a lawsuit with the State Administrative Court (PTUN). In the PTUN there is a specific period of time, namely Article 55 of the PTUN Law states, a lawsuit can only be submitted within a period of 90 (ninety) days after the decision can be accepted by the party who filed the lawsuit. That is, if there is no claim to the Administrative Court within 90 (ninety) days, the businessman is deemed to have received a P4P Decision. Thus, the P4P decision can be executed (execution).

In the IRC Law states, for parties who refuse advice can submit a claim to the IRC. However, because there is no time limit for filing a lawsuit, it causes the workers who finally file a lawsuit to the IRC, even though they fill the recommendation. In the trial even, the applicable procedural law is a civil procedural law which is a private jurisdiction.

²⁹Based on the KPK data, many judges have been arrested either through hand arrest (OTT) operations and the most horrendous is the Akil Mochtar case and according to MA data there are around hundreds of judges who have been dismissed and also partners and prosecutors.

³⁰Asfinawati dan Nurkholis Hidayat, *ManualPenyelesaian Perselisihan Hubungan Industrial:Panduan Beracara di Pengadilan Hubungan Industrial*,(Jakarta, Lembaga Bantuan Hukum Jakarta, 2006), page 11-14.

- c. Regulate the supervisory function.
Initially, supervision is a body that functions to enforce labor norms. Supervision also serves to provide sanctions to employers, if the employer has actually committed forms of violations of the Manpower Act. Supervision is also authorized to conduct investigations in following up on workers' reports that have been violated by their normative rights, because of their inherent duties as Investigators of Civil Servants (PPNS). However, with this IRC Law which classifies 4 (four) types of disputes, employers can easily refuse supervision with more reasons to be disputed at the IRC. The time limitation on the IRC is compared to the slow performance of the supervisory officer, it can also be ascertained to make the employer's lawsuit over the rights dispute will be completed earlier than the labor report to the Supervisor.
- d. Formalism in the process of dispute resolution. Almost all provisions in the IRC requires registration as well as evidence even when the process is still at a *biphritic* level. This is good for the administration but must be wary of Labor Unions. Unusual playing with official documents can be an obstacle in obtaining their rights, even though from the point of view of the substance being on the right side.
- e. Matching Labor Unionism, the PPHI Law has a hidden agenda to weaken Labor Unions. This can be seen from the scope of the dispute regulated in the IRC Law, which regulates disputes between Labor Unions in one company. This rule provides entrepreneurs with greater opportunity to control or control the activities of Labor Unions by manipulating the yellow Labor Unions to fight independent Labor Unions. It is in this context that Labor Unions are assigned. The main tasks of the union to educate and prosper the members are threatened to be ignored because they are preoccupied with internal problems facing conflicts with fellow labor unions.³¹
- f. Compromising the normative rights of workers. The Manpower Act has clearly and explicitly regulated what is the right of labor or also called normative rights. There is even a provision to provide criminal sanctions, for example Article 93 paragraph (2) of the Manpower Act which regulates the unpaid labor wages. But with the dispute over rights, the normative rights can be compromised. This can be seen from the matters stipulated in the IRC law, ranging from bipartite to tripartite which regulates "deliberation" of violations. Even in the IRC session, the judge will offer peace efforts to each party in accordance with the principles that apply in the civil procedure law.
- g. The difficulty of execution. The success of the labor struggle is when the worker is when the worker gets what is his right. Victory at the IRC is only a victory on paper because the workers still have to wait a long time until their rights are obtained. To get their rights as decided by the PHI, the workers must file an execution through a district court that requires their own time, requirements and costs.

³¹It should be referred by employers that companies that are reluctant to provide workers 'space to form trade unions that are chosen collectively and can represent workers' interests independently, see Rully Sandra dkk, *Modul Pelatihan prinsip-Prinsip Panduan PBB Tentang Bisnis dan HAM Memastikan Praktik Bisnis yang Menghormati Hak Asasi Manusia*, Infid (International NGO Forum on Indonesia Development), Jakarta, 2016, page8.

Legal Factors

The legal rules governing industrial relations still have an element of weakness, among others due to:

Legal Rules or Norms That Have Not Been Completed

The problem of financing, even though the case is worth Rp. 150 million is free of charge, but in fact the workers are still burdened by the cost of going home, going to the IRC which is only in the Provincial City, also still being subject to the costs of illegal fees such as legal for power of attorney, witness fees and others.³²

Bringing Workers/Laborers to Litigation At IRC

The level of mediation that is not binding on the parties to implement the mediator's decision, provides an opportunity for breakthroughs that harm workers/laborers. The employers, by letting the hanging case make the worker/laborer in a cornered position. The next leads the worker/laborer / to file a case with the IRC (Industrial Relations Court).³³

Civil Procedure Law at IRC

Use of Civil Procedure Law in connection with differences in character between cases of industrial relations disputes and general civil cases. When examined in depth, it will be seen that the handling of industrial relations disputes using a common civil procedure law that is colonial is not appropriate but must be with the law of special procedure³⁴. This is due to the fact that industrial relations disputes are different from general civil cases. Civil matters are generally related to property, while industrial relations cases concern the work and livelihood of workers and their families. In the matter of the work and livelihood of the worker/laborer the Government should be responsible and ensure that every worker/laborer does not easily lose his job and livelihood. Therefore, industrial relations cases are more likely to be public law cases than civil law. Because of that, it is necessary to deal with different civil matters in general. The use of the Civil Procedure Code is rigidly practiced including: making / registering lawsuit, peaceful efforts, answers, replications, duplicates, written evidence / witnesses, conclusions and judges' decisions. Also, in the case of cassation efforts include: giving IRC verdicts, signing of the cassation deed, making / registering the cassation memory, making / registering cassation memory, making / registering *contememorization*, reading the file by the parties, sending the file and then the decision of the Supreme Court. Also, regarding the execution of judges' decisions are very bureaucratic and costly. This is all part of the consequence of the application of pure civil procedural law as determined by article 57 of Law No. 2 year 2004.³⁵

a. The nature of passive IRC judges

The nature of IRC judges who are also like General Court judges is passive which has made it difficult for the workers/laborers to fight solidly. This is because the workers

³²interview with Bambang Hermanto, Pengacara SBSI 1992 Kabupaten Deli Serdang, 26 Mei 2017.

³³Interview with Ifan Suwandi, Commitee SBSI 1992 Kabupaten Deli Serdang, 26 Mei 2017.

³⁴Interview with Hakim Ad-hoc, Minggu Saragih, SH, MH, tanggal 17 Maret 2017. Even further he proposed not only the revision of Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement but also a special industrial relations court such as a religious court which deals with family matters.

³⁵That the lack of legal evidence from workers, such as the absence of pay slips, the absence of a letter of appointment of employees and the difficulty of presenting witnesses is the reason workers must accept decisions in accordance with the demands of the workers, interview with Bambang Hermanto, Advokat dan Ketua PPC SBSI 1992 Kabupaten Deli Serdang, 26 Mei 2017.

financially do not have any strength in handling the case, even since the beginning of the making and registration of the claim has experienced difficulties.³⁶

b. The high cost

Free fees for cases under Rp. 150,000,000 as ordered Article 58 of Law Number 2 year 2004 were not implemented consistently because of experience in the IRC, apparently there is still a requirement for litigation workers to spend around Rp. 750,000 for the purchase of seals lawsuits, photocopies of duplicate lawsuits, stamp/nazegelen/legalized evidence, witness-witness fees, decision making, and others. Also, regarding the execution of judges' decisions are very bureaucratic and costly. This is all part of the consequence of the application of pure civil procedural law as stipulated in article 57 of Law Number 2-year 2004.³⁷ But the free cost of cases under Rp.150,000,000 will be a bad precedent, for workers only to complain, even if they do not have any evidence because of the *prodeo*, while for entrepreneurs, it is the country that will pay the court fees if it is defeated in the case, even though he is rich.³⁸

c. Time Matters

The provisions of the law that industrial relations disputes must be resolved within 150 days are difficult to realize, because generally every case to arrive at the execution stage is hampered by the efforts of the employer for the Supreme Court case. Therefore, to reach a verdict that is ready for execution other than not easy, it also takes a lot of time.³⁹

d. There is a discontinuation of information on the IRC process.

This is specifically related to decisions that have been processed by IRC that were not given to the Manpower Office, because there is no formal procedure to provide them to the Manpower Office. As a result, the role of the Manpower Office is less than optimal in monitoring the progress of the case and to conduct surveillance, especially to help workers' rights violated.⁴⁰

The Analysis in Several Decisions as Follows:

No	Parties	Kind of Dispute	No. of Decision	Decision
1.	Yusni with the Director of PT. Tria Sumatera Lc Corporation International	Unilateral layoffs	62/G/2010/PHI.Mdn. dated 22 September 2010.	- Granted the plaintiff's claim for some with verstek. - Stating the working relationship between

³⁶The judge did not want to hear the case because the defendant's willingness to call was not and was not attended by the defendant who had been repeatedly summoned, the judge did not dare to take a verstek decision for fear of being sued by the defendant., interview with Ipan Suwandi, Committee SBSI 1992 Kabupaten Deli Serdang, 26 Mei 2017.

³⁷But along with the cyber-extortion policy launched by Jokowi-Jusuf Kalla's leadership illegal levies at the Medan PHI drastically decreased, interview with Ipan Suwandi, Committee SBSI 1992 Kabupaten Deli Serdang, 16 Mei 2017.

³⁸Mulyanto, *Masalah Penyelesaian Perselisihan Hubungan Industrial*, dalam Varia Peradilan No. 270 Mei 2008, Ikatan Hakim Indonesia (IKAHI), Jakarta, 2008, page25.

³⁹Interview with Ifan Suwandi, Committee SBSI 1992 Kabupaten Deli Serdang, 26 Mei 2017

⁴⁰_____, *Research Summary Kajian Terhadap Undang-undang No. 13 Tahun 2003 Tentang Ketenagakerjaan, Komisi Hukum Nasional, Jakarta, 2008, page 8.*

	Soechi Hotel Medan			<p>the plaintiff and the defendant having been terminated due to termination from September 25, 2009.</p> <ul style="list-style-type: none"> - -Sentenced PT. Tria Sumatra (Medan Soechi International Hotel) to pay the rights to the plaintiff as a result of layoffs, in the form of severance pay. Employee award money, rights compensation money totaling Rp. 25,806,000 (twenty five million eight hundred six thousand rupiah).
2.	Ruslin Manullang, Roida Gultom and Ermawati Turnip Against PT. Siantar Top, Tbk	Layoffs for resigning.	73/G/2011/PHI.Mdn dated 15 Nopember 2011	<ul style="list-style-type: none"> - Grant the plaintiff's claim in part. - Stating the demonstrations and strikes carried out by the plaintiffs were invalid. - Declare the relation of the plaintiff and the defendant to break up due to qualification to resign. - Punish the defendant to pay the plaintiff's rights in the form of compensation for housing rights and treatment and medication, as follows: <ul style="list-style-type: none"> - 1. Ruslin Manullang: Rp. 2,051,190 (two million one hundred fifty one thousand one hundred ninety rupiah). - 2. Roida Gultom: Rp. 2,222,122 (two

				million two hundred twenty two thousand one hundred twenty two rupiah). - Ermawati Turnip: Rp. 2,222,122 (two million two hundred twenty two thousand one hundred twenty two rupiah).
3.	Mediana Situmorang, SE and Maradont Hutasoit Against UD. Sumatra Pasak Bumi	Layoffs Secretly	58/G/2012/PHI.Mdn dated 27 September 2012	- Granted the plaintiff's claim partly with verstek. - Punish the defendant to pay normative rights to the plaintiff: - 1. Mediana, SE = Rp. 65,550,000 - 2. Maradont Hutasoit: Rp. 23,184,000

Analysis of the three IRC decisions above can be examined from several aspects, namely aspects of compliance with the Civil Procedure Law, Application of Civil Procedure Law, Logical Law Reasoning of cases and values that live in society.⁴¹

Based on seeing the decision of the Medan IRC judge on the layoff victims, the tendency can be analyzed:

- a. Granting requests for normative rights of workers such as severance pay. Employee award money, rights compensation money.⁴² This tendency is indeed oriented towards ensuring legal certainty.
- b. Looking at the actual application of law in the field related to the execution of decisions (executions) cases of industrial relations disputes are very difficult to do, especially the execution concerns the interests of workers/laborers. If the winning party is a worker/laborer (who is defeated by the Entrepreneur), the defeated party is not willing to voluntarily fulfill the content / decision. What is clear if seen in the PHI's office, there are so many that cannot be implemented. Therefore, basically the transfer of the problem of the settlement of labor disputes/industrial relations disputes from the Ministry of Manpower to the judiciary, there were no significant changes. So that the victory (especially the workers/laborers) is only a victory on paper (pseudo) and cannot be concretely enjoyed by the workers.⁴³

⁴¹ See Komisi Yudisial, *Kualitas Hakim dalam Putusan*, Laporan Penelitian, Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2014, page

⁴² See putusan No. 58/G/2012/PHI.Mdn tanggal 27 September 2012, Putusan No 73/G/2011/PHI.Mdn tanggal 15 Nopember 2011 dan Putusan No 58/G/2012/PHI.Mdn tanggal 27 September 2012

⁴³ Data di PHI Medan 2017 and Interview with Bambang Hermanto, advokat dan Committee DPD SBSI 1992 Kabupaten Deli Serdang pada tanggal 25 Mei 2017.

Reconstruction of Ideal Protection by the State against Layoff Victims in the Industrial Relations Court Based on Justice

Value is interpreted as a statement about what someone wants⁴⁴. The norms and values refer to the same thing but from different perspectives. That norm represents a social perspective, while value sees it from an individual perspective.⁴⁵ The interesting thing said by Jhon Finley Scot is that human beings as societal creatures give a very strong response to the reactions they do with other members of the community, so that the values which are seen as the most powerful are generally social. In this connection, in other words, it is to be said that these norms are at the same time the strongest values for them.⁴⁶

The value is essentially to point to something valuable, while the valuable itself can be interpreted as the nature or quality of something that is beneficial to human life. Therefore, talking about values begins with humans. Because of the value due to the human being who assesses it. At first, the value begins with the existence of people who have ideas. In the idea of man, there is a will. The human will is then shed on weighing activities. Furthermore, the results of the weighing activity process will give birth to a decision. In decisions that have gone through a weighing process, the effort is sought to be of value.⁴⁷

According to Max Scheler, that value can be grouped on the value of enjoyment (taste, pleasure, happy), life value (health, freshness, physicality, mental value (truth, humility) and spiritual value (holiness).⁴⁸

Value in law lies in the deepest and highest position since value has become a source of legal existence. The nature is still so abstract, the value needs to be realized first into a form of legal principles in the form of legal principles and at the same time underlies the existence of the principle of law itself. When compared, the value is the heart of the rule of law, while the principle of law is the heart of the rule of law.⁴⁹

The regulation of industrial relations dispute resolution mechanisms by presenting IRC (Industrial Relations Court) as the main mainstay of dispute resolution makes the settlement system more liberal and tends to be undemocratic. The course of the case is entirely in the hands of the disputing parties. The role of the government (executive) to be involved in labor disputes has been greatly reduced, the role of involvement in the process of resolving cases has shifted to the courts (judicial).

Referring to John Rawls's theory of justice (A Theory of Justice), the provisions governing freedom must be such that only can be restricted for the sake of freedom itself. Therefore, it is not permissible to eliminate or exclude freedom itself.

Based on democracy and John Rawls's theory of justice, ideally the settlement of industrial relations disputes is resolved through bipartite negotiations between workers and employers. They negotiate and make an agreement, then the case is over. Through the agreement of the

⁴⁴ See John Finley Scott, *Internalization of norms*, sebagaimana dikutip oleh Satjipto Raharjo, *Hukum dan Masyarakat*, Angkasa, Bandung, 1980, page 77

⁴⁵ *ibid*

⁴⁶ *Ibid*.

⁴⁷ Muhammad Erwin dan Firman Freaddy Busroh, *Pengantar Ilmu Hukum*, opcit, page 86.

⁴⁸ Darji Darmodiharjo dan Shidarta, *Pokok-pokok Filsafat Hukum (Apa dan Bagaimana Filsafat Hukum Indonesia)*, Gramedia Pustaka Utama, Jakarta, 1995, page 211.

⁴⁹ Muhammad Erwin dan Firman Freaddy Busroh, opcit, page 86-87.

parties, a joint decision can be obtained which benefits both parties. But the fact is that with the enactment of Law Number 2-year 2004 concerning Industrial Relations Dispute Resolution, it tends to turn off the spirit of negotiations to reach an agreement. From the sound of Article 3 Paragraph (3) of Act Number 2-year 2004 which reads: "if within 30 (thirty) days as referred to in Paragraph (2) one party refuses to negotiate or has negotiated but has not reached an agreement then bipartite negotiations are considered to be a failure ". Article 3 Paragraph (3) of Law Number 2 Year 2004 has resulted in a lack of functioning of the bipartite in the settlement of industrial relations disputes and as such the ability of subsequent parties includes cases to the mediation institution. This mediation institution has the function to mediate in the context of settling industrial relations disputes in the Regency/City manpower agency.

However, the juridical function of the mediation institution is weak, because the opinion of the mediator in the form of recommendations is not binding on the parties, and the parties can reject it. So, mediation is mere administration. This condition tends to be used by the employer to be passive at the recommendation of the mediator, and as a result force the workers/laborers concerned about the settlement of the case, so that the position of the worker/labor as the party concerned has to file a case. Reality shows that rarely is the demand to the IRC submitted by the employer, including the case of layoffs. For example, out of 165 cases of dismissal of layoffs at the Medan IRC from March 28, 2006 to July 2007, all were lawsuit filed by workers. None of the requests for termination of employment were filed by employers.⁵⁰

Surya Perdana's research in the period 2008-2013 found that mediation was still the choice of employers and workers. The conclusion is:

Workers and employers choose mediation as a settlement of disputes over termination of employment because the advantages of the settlement process which are generally relatively quicker can be realized one or two months. It only takes twice or at most three meetings. It is relatively inexpensive because the mediator has received functional allowances from the government. It is confidential, may not be covered and not published.

According to Fuller, there are eight values that must be realized in law. The eight values are called "the eight principles of legality"⁵¹, are:

- a) There must be rules in advance; this means there is no place for ad hoc decisions, or arbitrary actions;
- b) These regulations must be announced properly
- c) These regulations cannot be retroactive;
- d) The formulations must be clear and detailed; it must be understood by the people;
- e) The law cannot ask for the execution of things that are not possible.
- f) Among other rules, there must be no contradiction with each other.
- g) Regulations must remain, may not be changed frequently
- h) There must be conformity, between the actions of legal officials and the regulations that have been made.

⁵⁰ Data were analyzed by Kepaniteraan PHI Medan 2016.

⁵¹ Lon L. Fuller, *The Morality of Law* sebagaimana dikutip oleh Satjipto Raharjo, *Hukum dan Masyarakat*, opcit, page 78.

Failure to realize one of these values only leads to a bad legal system, but more than that, such a law cannot be called a law at all. Like Fuller, Schuyt also argued that the law contained in him the value that is interesting, so that the law can be called an intrinsic system.⁵²

The life of a nation is not determined by its "Gestalt view" (Gestalt visie) concerning the law and this is based on the values which it considers intrinsic to the law. What later will be realized as law in the community in question depends on the starting point of view about what includes those values. In the discussion of law, these values develop into a relationship between law and morality. By Schuyt, morality is distinguished in the formal and material. Law is often used to burden members of society with material morals, such as criminal threats to homosexuality, self-murder, adultery, abortion, and so on.

Meanwhile, Philip Selznick argued that the law was closely related to the effort to realize certain values. Selznick said that today there can be a conflict between the two views in the law, which first sees the law as something that must be taken for granted. On the other hand the second has an idealistic viewpoint, he argues that the law aspires to achieve moral goals. The first view is also called functional and sees the law as a means to solve practical problems. In contrast to this, the idealist view has taken the law with hope and promise.

If the presence of the law is seen functionally, then it is called upon to serve elementary needs for social survival, such as: maintaining peace, resolving disputes, eliminating deviations, in short, the law maintains order and exercise control. Here order itself is not the main concern. Furthermore, it can also be seen as a separate value in society. Justice is not a symbol that must be realized, even in extreme circumstances sometimes it is ignored. But somehow order and control can in fact also be seen as a separate value in society, because that in itself is something that is given awards by the community.

Another view says, law is an institution in society that enforces order and carries out certain quality controls. This view demands that the law is more than just exercising control and maintaining order, but that the law has a richer value. Therefore, the law in itself contains its own values, so it cannot be bought at any price.

The institution for resolving disputes is intended to be IRC based on Law Number 2- year 2004. But unfortunately, the provision is not equipped with sanctions, so it is not effective. Things like this are clearly very beneficial for the employers and are more benefited by the provisions of Law Number 2- year 2004, Article 14 paragraph (1) which states: "in the event that the recommendation is rejected by one party or parties, then one party or the parties can continue the settlement of the dispute over the Industrial Relations Court at the local District Court". This article is appropriate to be reconstructed due to the absence of sanctions so that due to one party or the parties rejecting the recommendation of the mediator, based on Article 14 paragraph (1) of Law Number 2-year 2004 concerning Industrial Dispute Settlement, the case is opened to the Court of Relations Industrial at the local District Court. The weak position of the bipartite negotiating institutions and mediation negotiating institutions resulted in the case of industrial relations disputes flowing to the IRC (Industrial Relations Court) and MA (Supreme Court). According to information from the Director General of Industrial Relations Settlement and the Social Security of the Indonesian Ministry of Manpower and Transmigration, that the number of labor disputes during 2005 recorded 114 thousand who entered the IRC and MA (Supreme Court). This does not include cases in 2006 and 2007.

⁵² Schuyt, *Rechtssociologie*, sebagaimana dikutip oleh Satjipto Raharjo, ibid, page 78

Reconstruction The ideal protection by the state against layoff victims is carried out after analyzing Law No.13 year 2003 in the optical theory of justice law, the state law theory of legal protection theory. After that a legal comparison with other countries, such as Malaysia, India, Singapore and the Netherlands was carried out to get universal values.

Based on the epistemological steps above, it is necessary to reconstruct the articles contained in Law No.13 of 2003 concerning Manpower, namely:

Before Construction	After Construction
Article 151 Paragraph (3) reads "in the event that the negotiations referred to in paragraph (2) really do not result in an agreement, the employer can only terminate the employment relationship with the worker/laborer after obtaining a determination from the industrial relations settlement institution".	Article 151 Paragraph (3) reads "in the event that the negotiations referred to in paragraph (2) really do not result in an agreement, the employer can only terminate the employment relationship with the worker/laborer after obtaining a determination from the industrial relations settlement institution". Termination without stipulation from the IRC is declared null and void.

Furthermore, the addition to article 151 plus 1 paragraph becomes paragraph 5, which reads:

Article 151 paragraph (4)	During the stipulation of the industrial relations settlement institution, the employer continues to employ workers and provide normative rights in accordance with the provisions of the legislation.
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Conclusion

Factors that hinder the provision of protection for laid-off workers based on justice in Industrial Relations Dispute Settlement in Medan City, among others due to: Legal factors, namely the rule of law which regulates industrial relations there are still elements of weakness, among others due to legal norms that have not complete, lead workers/laborers to litigate in the IRC, Civil Procedure law in the IRC, the nature of passive IRC judges, high costs, time problems, disconnection of information on the IRC process. The ideal construction of Article 151 paragraph (3) which reads: "in the event that the negotiations referred to in paragraph (2) really do not result in an agreement, the entrepreneur can only terminate the employment relationship with the worker/laborer after obtaining an appointment from the industrial relations settlement institution", reads: "in the event that the negotiations referred to in paragraph (2) really do not result in an agreement, the employer can only terminate the employment relationship with the worker/laborer after obtaining an appointment from the industrial relations settlement institution". Termination without stipulation from the IRC is declared null and void. Then added another 1 (one) paragraph to article 151 paragraph (4) which reads: "During the stipulation of the industrial relations settlement institution the employer continues to employ workers and provide normative rights in accordance with the provisions of the legislation

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