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RESEARCH ARTICLE

THE ABSOLUTE COMPTENCE OF THE INDUSTRIAL RELATIONS COURT IN RESOLVING EMPLOYMENT TERMINATION DISPUTES

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ABSTRACT

Employment relations are subject to contracts agreed upon by employers and employees. Law Number 13 of 2003 clearly defined that employment relations as an agreement between an employer and their employees. The jurisdictional scope or competence of the Industrial Relations Court is further elaborated in Section 56 Law Number 2 of 2004. However, Section 56 Number Law 2 of 2004 has spurred further debate regarding the proper competence of the Industrial Relations Court, because, under this law, the Court has issued ineffective and inefficient court decisions. This research analyzed and criticized the competence of the Industrial Relations Court in presiding over the termination of employment contracts. In analyzing this problem, this paper deploys the theory of competence, theories of justice and the rule of law, subjective justice, the competence of the Industrial Relations Court according to existing laws, and expert views on the contribution of existing literature towards the competence of the Industrial Relations Court. This research emphasized that an excess of laws governs the termination of employment contracts, which supposedly lies under the competence of the Industrial Relations Court. Hence, to protect the rights of employees in the context of industrial relations, a judicial review of Law Number 2 of 2004 on Manpower is required.

Keywords: Industrial Relations Court; Competence; Employment Disputes; Termination; Subjective Justice

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INTRODUCTION

Since Dutch colonialism in Indonesia, labor and employment has become a very crucial issue, where everyone needs a source of income in order to live.

In order to do so, one is dependent upon others to draw an income.[1] Someone who lacks capital requires a source of employment from others, while others who have obtained sufficient capital will need employees in order to maintain the productivity of their capital. This relationship of dependence is known as an employment relationship, which occurs when a person (worker or employee) provides expertise and energy to another entity (employer or leader) in return for a sum of money.[2] An employment relationship is defined as a relationship between employers and employees

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[1] RIDWAN HALIM & SRI SUBIANDINI GULTOM, SARI HUKUM PERBURUHAN AKTUAL 57-60 (1987). In the Dutch colonial era, there were four labor types and labor laws in force. The four laws are slavery, servitude, labor, and *Poenale Sanctie*. The first law is slavery. At this time, Indonesian people who were slaves did not have any rights, including the right to life. Some rules that were made related to slavery at this time included regulations on the registration of slaves, taxes on slave ownership, or changing names for slaves. Next is the law of servitude. At first glance, this law has similarities with slavery, it's just a bit lighter. A servant, according to this law, is a collateral because of a debt that cannot be repaid. As a result, as long as the debt is not paid off, a servant will continue to serve the employer. After the law of servitude, compulsory law emerged, which in practice was not much different from slavery. In compulsory law, people are forced to work in the interests of the authorities. One form of cruelty from compulsory law in the Dutch colonial era is the construction of the Daendels Road as far as 1,000 km connecting between Panarukan in East Java and Anyer in Banten. Poenale Sanctie became labor and employment law in Indonesia that came into force after compulsory labor law. The emergence of this law began with the existence of *Agrarische Wet* or the Agrarian Law in 1970. During this time, there were many large-scale private plantation companies. Therefore, laws governing labor play a central role. Initially, at the *Sanction Poenale*, a *Politie Straaf* regulation, aka the Police Criminal Regulations was applied. This regulation emphasized the interests of employers and was finally abolished in 1879. Its existence was replaced by *Koeli Ordonantie* (1880), which was later known as *Poenale Sanctie*. In this latest law, the Dutch Government prohibits coercion, threat or extortion in labor relations. In addition, agreements between workers and employers must be made in writing within a certain time frame. When this rule is violated, there will be sanctions imposed on violators, both employers and workers. For more comprehensive picture, please s*ee* ERIC JONES, WIVES, SLAVES, AND CONCUBINES: A HISTORY OF THE FEMALE UNDERCLASS IN DUTCH ASIA 257-285 (2011); Harry J. Benda, *Christiaan Snouck Hurgrounje and the Foundations of Dutch Islamic Policy in Indonesia*, 30 THE JOURNAL OF MODERN HISTORY. 338, 340-346 (1958); ADRIAN VICKERS, A HISTORY OF MODERN INDONESIA 245-255 (2013); David K. Linnan, *Indonesian Law Reform or Once More unto the Breach: A Brief Institutional History*, 1 AUSTRALIAN JOURNAL OF ASIAN LAW. 1, 15-17 (1999); Pratama Herry Herlambang, *Implementation on Transfer of Undertaking Protection of Employment to Outsourcing Labors in Semarang Indonesia: A Legal Approach.* 3 JILS (JOURNAL OF INDONESIAN LEGAL STUDIES). 109, 111-113 (2018).

[2] ABDULKADIR MUHAMMAD, HUKUM PERJANJIAN 115-117 (2006); Jan Drahokoupil & Brian Fabo, *The Platform Economy and the Disruption of the Employment Relationship*. 5 ETUI RESEARCH PAPER-POLICY BRIEF. 1, 4-5 (2016); Dionne Pohler & Joseph A. Schmidt, *Does pay-for-performance strain the employment relationship? The effect of manager bonus eligibility on nonmanagement employee turnover*, 69 PERSONNEL PSYCHOLOGY. 395, 400-415 (2016); Mieke Audenaert, Alex Vanderstraeten, & Dirk Buyens, *When affective well-being is empowered: The joint role of leader-member exchange and the employment relationship*. 28 THE INTERNATIONAL JOURNAL OF HUMAN RESOURCE MANAGEMENT. 2208, 2210-2219 (2017).

after an employment agreement has been reached. Workers have a very important role in achieving national development goals, increasing the quality of national development, and in protecting their rights and interests in accordance with the principles of dignity and humanity.[3]

In line with the new era of governance in Indonesia, namely the Reform Era, which has renewed all arenas of national and state life, Presidential Decree Number 83 of 1998 ratified the International Labor Organization (ILO) Convention Number 87 of 1948 concerning the Freedom of Association and Protection of the Right to Organize/Convention Concerning the Freedom of Association and Protection of the Right to Organize.[4] The Regional/Central Labor Dispute Settlement Committee under the auspices of the Ministry of Manpower, which was established in 1957, no longer has the jurisdictional authority to preside over disputes regarding employment termination, which has been governed by District Courts under the provisions provisions of Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement since January 14, 2005. By the Regional/Central Labor Dispute Settlement Committee, these cases were tried by summoning the disputing parties, namely employers and workers/labor unions.[5] Provisions in Law Number 2 of 2004 state that the Industrial Relations Court is a Special Court that functions as a general court (Article 55). If the disputing parties agree to settle in court, then in Article 55 of Act Number 2 of 2004 governs the right to examine, hear and decide on an industrial relations dispute under the Industrial Relations Cour,t which is a special court within the scope of general courts. According to Article 56 of Act Number 2 Year 2004, the Industrial Relations Court has the duty and authority to examine legal

[3] SISWANTO SASTROHADIWIRJO, MANAJEMEN TENAGA KERJA INDONESIA: PENDEKATAN ADMINISTRATIF DAN OPERASIONAL 75-76 (1987); Samsuni, *Manajemen Sumber Daya Manusia.* 17 AL-FALAH: JURNAL ILMIAH KEISLAMAN DAN KEMASYARAKATAN. 113, 120-121 (2017); Dimas Ardiansyah, Eny Rochaida, & Diana Lestari, *Pengaruh Upah dan Tingkat Pendidikan Terhadap Penyerapan Tenaga Kerja*. 2 JURNAL ILMU EKONOMI MULAWARMAN (JIEM) 15, 20-22 (2018). Further, the Indonesian Ministry of Manpower underlines that currently there are still three important problems that the government must face in creating human resources or workers. He said the three issues were related to the quality of workers, the quantity of workers and the problem of worker spread. *See* Dias Prasongko, Ali Akhmad Noor Hidayat (ed), *Menteri Tenaga Kerja Sebutkan Tiga Masalah SDM Indonesia*, *TEMPO*, https://bisnis.tempo.co/read/1144463/menteri-tenaga-kerja-sebutkan-tiga-masalah-sdm-indonesia/full&view=ok

[4] LALU HUSNI, PENGANTAR HUKUM KETENAGAKERJAAN INDONESIA 35-37 (2001).

[5] THOGA M. SITORUS, MASALAH KETENAGAKERJAAN DI INDONESIA DAN DI DAERAH (PASCA REFORMASI) 34-39 (2007).

disputes and issue court decisions (Law Number 2 of 2004 Concerning Settlement of Industrial Relations Disputes).

However, the provisions of Article 56 of Act Number 2 of 2004 have been much debated, because the jurisdictional scope or competence of the Industrial Relations Court in resolving industrial relations disputes remains unclear. The scope of the Industrial Relations Court's jurisdiction is contained in the provisions of Article 56 of Act Number 2 of 2004, which is considered by some legal scholars as a redundant legal provision. For example, according to Imam Soepomo (which is further elaborated by HM Laica Marzuki[6], employment termination disputes are part of a dispute over employment rights, such that employment termination disputes are contained only in the provisions in Paragraph 1 of Article 56. Provisions of Article 56 paragraph (1) states that the Industrial Relations Court is authorized to examine and decide upon the settlement of industrial relations disputes regarding labor rights. Regarding paragraph (3) of the same article, Soepomo & Marzuki interprets employment termination disputes as part of a dispute regarding labor rights; thus, paragraph (1) of the same article should be sufficient. Furthermore, concerning paragraph (2) of the same article, there are scholars who argue that the Industrial Relations Court is not authorized to examine and decide upon disputes over vested interests, because such disputes have been sufficiently elaborated in employment agreements or collective labor agreements. This

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[6] Laica Marzuki, *Mengenal Karakteristik Kasus-Kasus Perburuhan*, 133 VARIA PERADILAN. 145, 155-156 (1996). Some weaknesses of the Manpower Act have been shown and highlighted by some previous researches, where there are inconsistencies with regard to employees with certain employment agreements, and even regarding industrial relations courts. During this time, the court in charge of disputes in industrial relations has been judicial. This is considered inappropriate because the agency should specifically deal with industrial relations issues. Instead of judicial institutions, industrial relations courts are more suitable executive institutions. Not only that, the industrial relations court must also provide workers with a friendly justice search service. Moreover, currently in practice, disputes between workers against entrepreneurs in the industrial relations court ended with the victory of employers. The majority are due to financial problems from the workers. *Please see* also Aloysius Uwiyono, *Mekanisme Penyelesaian Perburuhan Dikaitkan dengan Pola Hubungan Perburuhan.* 22 JURNAL HUKUM & PEMBANGUNAN. 476, 480-485 (2017); Abdul Rasyid Saliman & E. Vita Mutiarawati. *Model Perlindungan Hukum Integratif Buruh Migran Indonesia Dalam Masyarakat Ekonomi ASEAN*. 10 PROGRESIF: JURNAL HUKUM. 143, 149-153 (2016); Tongam Sihol Nababan, Elvis Fresly Purba, & Jongkers Tampubolon. *Influence of Input Value and Labor Expenditure on Output Value: A Case of Micro and Small Scale Industry in Indonesia.* 4 INTEGRATED JOURNAL OF BUSINESS AND ECONOMICS. 45, 50-55 (2020).

situation has resulted in legal uncertainty, especially for workers who fight for their rights to obtain legal certainty and justice.

In carrying out the provisions contained inArticle 56 of Act Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, the Industrial Relations Court as a judicial institution that has the competence to resolve industrial relations problems has failed to provide legal certainty and a sense of justice for both employers and employees. The Court's excessive jurisdictional scope has resulted in ineffective and inefficient decisions. As an example, during a hearing that is part of a lawsuit, the plaintiff often misinterprets the case being experienced. Frequently, the plaintiff submits a lawsuit regarding improper termination of employment, but, in the positive description, the problem is not the mechanism and procedure for employment termination itself. Rather, the grounds for the plaintiff's dispute are the improper fulfillment of their rights after employment termination. Such inappropriate handling of disputes has an impact on the purpose of the Industrial Relations Court to settle industrial relations disputes. Thus, employers and workers will not achieve legal certainty and a sense of justice through the Industrial Relations Court.[7]

The problem examined in this study is as follows: what is the proper competence of the Industrial Relations Court in employment termination cases? The method used in this study is a normative juridical research model, specifically the statute approach method. This study uses statute approach method to examine legislations[8] that govern the competence of the Industrial Relations Court in resolving employment termination disputes.

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[7] SAIFUL ANWAR, SENDI-SENDI HUBUNGAN PEKERJA DENGAN PENGUSAHA 50-55 (1991). There are several relationships between employers and workers that are also very important to underline. *See* Mangaraja Manurung, *Pengaturan Perjanjian Kerja Waktu Tertentu dalam Hubungan Kerja Antara Pekerja/Buruh dengan Pengusaha*. 2 JURNAL PIONIR. 215, 220-221 (2017); Waluyo Zulfikar, & Ipah Ema Jumiati, *Formulasi Kebijakan Pendirian Lembaga Peradilan Khusus Hubungan Industrial Di Kabupaten Bekasi*. 8 JURNAL ADMINISTRASI PUBLIK. 125, 130-135 (2017); Nina Anggraeni, *Perlindungan Hukum Terhadap Hubungan Kerja Dan Pemutusan Hubungan Kerja (Studi di PT Triple S Kediri)*. 5 JURNAL EKUIVALENSI. 89, 90-95 (2019). In the same context and for more comprehensive picture and comparison, also *see* Carol Chan, Carolina Ramírez, & Carolina Stefoni. *Negotiating precarious labour relations: dynamics of vulnerability and reciprocity between Chinese employers and their migrant workers in Santiago, Chile.* 42 ETHNIC AND RACIAL STUDIES. 1456, 1459-1472 (2019).

[8] Republic of Indonesia, Law Number 2 of 2004 concerning Industrial Relations Dispute Resolution, INDUSTRIAL RELATION DISPUTE RESOLUTION ACT (2004)

The method used in this study is a normative juridical research model, specifically the statute approach method. This study uses the statute approach method to examine legislations (Republic of Indonesia State Law Number 2 of 2004 concerning Industrial Relations Dispute Resolution) that govern the jurisdictional scope or competence of the Industrial Relations Court in resolving employment termination disputes.

COMPETENCY THEORY

Competence is also referred to as authority (power) to find (decide something). The competence of a particular court to examine, hear, and decide on a case depends on the type and level of such a court according to applicable laws and regulations. Based on the type and environment of the court, the General Courts are distinguished (including the Industrial Relation Court and the Corruption Court) into Military Courts, Religious Courts, and State Administrative Courts. According to its level, Indonesian courts consist of the First Level Court, the High Court (Appeals), and the Supreme Court (Cassation Level Court). The first level court is determined by the number of regional level II governments (regencies/municipalities), the number of high-level court cases as many as the number of provincial level administrations, while the Supreme Court (cassation) only exists in the national capital as the culmination of all existing court environments.

It is understood that the main pillar of the state of law is the principle of legality. The principle of legality implies that the source of authority for government is legislation.[9] Theoretically, there are three ways to obtain authority derived from legislation[10] namely: 1) attribution; 2) delegation of authority with delegates, and 3) delegation of authority with a mandate. Each judiciary has two competencies, namely relative

[9] RIDWAN HALIM, HUKUM ADMINISTRASI NEGARA 37-42 (2006). Furthermore, the government legislation and the relation with competency theory, highlighted that some factors have globally impacts to the management of labor and employment itself. *See* Tong Wooi Chow, Lailawati Mohd Salleh, & Ismi Arif Ismail. *Lessons from the Major Leadership Theories in Comparison to the Competency Theory for Leadership Practice*, 3 JOURNAL OF BUSINESS AND SOCIAL REVIEW IN EMERGING ECONOMIES. 147, 150-153 (2017); Venelin Terziev, Oleg Latyshev, & Marin Georgiev. *Building competencies for social work through continuing vocational training.* 3 INTERNATIONAL E-JOURNAL OF ADVANCES IN EDUCATION. 638, 640-648 (2017).

[10] AGUSSALIM ANDI GADJING, PEMERINTAH DAERAH (KAJIAN POLITIK DAN HUKUM) 44-46 (2007).

competence and absolute competence.[11] The division of Absolute competencies and Relative Competencies is as follows.

I. ABSOLUTE COMPETENCE

Regarding the authority of the judicial body to examine, hear, and decide on a particular case that is absolutely impossible for other judicial bodies to do; as known in Law Number 48 of 2009 concerning Judicial Power[12], we know 4 (four) judicial environments, namely; general justice, religious justice, military justice, and state administrative courts.

a. Absolute Competence of General Courts is to examine, hear, and decide criminal cases committed by civilians and civil cases, unless a statutory regulation determines otherwise (Article 25 Paragraph (1));
b. Absolute Competence of the Religious Courts is examining, judging, and deciding cases of people who are Muslim in the fields of marriage, inheritance, will, grant, *waqaf*, and *sadaqah* (Article 25 Paragraph (2));
c. Absolute Competence of Military Courts is to examine, hear, and decide criminal cases committed by members of the military both from the army, navy, air force, and police (Article 25 Paragraph (3));
d. The absolute competence of the State Administrative Court is examining, adjudicating, and deciding on disputes arising in the field of state administration between a person or civil legal entity with a state administrative body or officials due to the issuance of a state administrative decision, including personnel disputes or the non-issuance of a decision within time limit specified in a statutory regulation, while the issuance of a decision has become the obligation of the relevant state administration body or official (Article 25 Paragraph (4)).

II. RELATIVE COMPETENCE

The relative competence of the court is the authority of a particular judicial environment based on the jurisdiction of its territory, namely to

[11] MUSTHOFA, KEPANITERAAN PENGADILAN AGAMA 23-26 (2005).
[12] Republic of Indonesia, Law Number 48 of 2009 concerning Judicial Power, JUDICIAL POWER ACT (2009)

answer the question "Which regional court is authorized to try a case?" In civil procedural law, according to Article 118 Paragraph (1) *Herzein Inlandsch Reglement*/HIR,[13] the court authorized to hear a civil case is a District Court (DC), whose jurisdiction covers the residence of the defendant (*actor sequitur forum rei*). Submitting a lawsuit to a court outside the jurisdiction of the defendant's residence is not justified.

The relative competence of the court is the authority of a particular judicial environment based on the jurisdiction of its territory, namely to answer the question "Which regional court is authorized to try a case?" In civil procedural law, according to Article 118 Paragraph (1) HIR, which is authorized to hear a civil case is a District Court (DC) whose jurisdiction covers the residence of the defendant (*sequitur actor forum rei*). Submitting a lawsuit to a court outside the jurisdiction of the defendant's residence is unjustified.

However, what if a defendant has multiple official residences? In this case, the plaintiff can submit a lawsuit to one of the DC where the defendant lives. For example, a defendant in his identity card is stated as living in Kupang City, where the defendant also owns a business, while, in fact, he also lives in Denpasar. In such a case, the claim can be submitted to both DCs in the jurisdictions of Kupang City and Denpasar. Thus, the starting point of determining which DC is authorized to hear cases is where the defendant lives and not the place of the crime (*locus delicti*) as in criminal procedural law. In the event that a case has several defendants, and each defendant resides in different jurisdictions, the plaintiff can file a claim to the DC whose jurisdiction covers the residence of one of the defendants. The plaintiff has the right to different options, provided that the defendant consists of several people and each of them lives in a different DC jurisdiction. If the defendant consists of more than one person, where one defendant is the principal debtor while the other defendant is the guarantor, then the relative authority of the DC who hears the case falls to the DC whose legal area covers the principal debtor's residence.

Another option is a lawsuit filed with the DC whose legal territory covers the plaintiff's residence, that is, if the defendant's residence is unknown. In order to not be manipulated by the plaintiff, a claim that the defendant's residence is unknown requires a statement from the relevant

[13] Herzein Inlandsch Reglement (HIR) (1941)

official, such as a statement from the village head. If the object of the claim concerns an immovable object (fixed object), such as land, then the claim is filed with the DC whose legal area includes the immovable object. If the existence of immovable objects covers several jurisdictions, the claim is submitted to one DC at the choice of the plaintiff. However, if the case is a case for claims of compensation based on Article 1365 of the Civil Code whose source comes from immovable objects, then the principle of the *actor sequitur forum rei* applies (the immovable object is a "case source" and not a "case object"). For example, demands for compensation over damages inflicted on a plantation. In the agreement, sometimes the parties determine a particular DC who competently checks and hears their case. This, based on the principle of freedom of contract, can be included as an agreement clause, but if a dispute occurs, the plaintiff has the freedom to choose whether the choice of a DC is based on the clause designated in the agreement or based on the principle of *actor sequitur forum rei*. Thus, the choice of a particular place of domicile in an agreement does not absolutely exclude the principle of the *sequitur forum rei actor*, and the defendant cannot execute such action. For example, the court that has the authority to try a crime that took place in Cimahi is the Bandung District Court. Thus, it can be concluded that the term attribution of Sjarah Basah is equal to absolute competence and for the term delegation is the same as relative competence.

Competence of The Industrial Relations Court

Competence is the authority (power) to determine or decide upon an issue. The competence of a court to examine, hear and decide on a case relating to the type and level of the existing court is based on applicable laws and regulations. Based on the type and environment of the court, the General Courts, Military Courts, Religious Courts, and State Administrative Courts (Administrative Courts) are distinguished. Based on its level, the court consists of the First Level Court, the High Court (Appeals), and the Supreme Court (Cassation Level Court). Thus, the number of first-level courts is determined by the number of regional level II governments (regencies/municipalities), while the number of high-level courts (number)

is determined by the number of first-level governments (provinces). The Supreme Court only exists in the national capital from all existing court environments.

Law Number 2 of 2004 governs court competences to examine and hear cases of Industrial Relations disputes or Labor Disputes. Previously, industrial relations disputes were governed by the Regional Labor Dispute Settlement Committee, but such disputes are now defined under the absolute competence of the IRC. Based on the provisions of Article 1 number 17 of Act Number 2 Year 2004, the IRC is a special court established within the district court that has the authority to examine, hear and give decisions on industrial relations disputes. The limitation of the definition of industrial relations disputes based on the provisions of Article 1 number 1 of Act Number 2 of 2004, is that Industrial Relations Disputes are differences of opinion which result in conflicts between employers or joint entrepreneurs with workers or trade unions due to disputes regarding rights, interest disputes, termination of employment disputes and disputes between trade unions in one company. In accordance with the provisions of Article 56 of Act Number 2 of 2004, it is stated that the industrial relations court has the duty and authority to examine and decide:

1. At the first level regarding rights disputes;
2. At the first and last level regarding interest disputes;
3. At the first level regarding employment termination disputes;
4. At the first and last level regarding disputes between labor union in 1 (one) company

In general, the procedural law that applies to the IRC is the Civil Procedure Law which applies to courts in the General Courts environment, except those specifically regulated in Law Number 2 of 2004. This is explicitly stated in Article 57 of Act Number 2 of 2004 Thus, this provision regulates the provisions and procedures of the procedure which constitute special provisions (*lex specialis*) and general procedural legal provisions that apply so that general civil procedural law only applies if it is not regulated in the special law. One exception in the IRC's procedural law is the explicit determination of the period of settlement of cases within a relatively short period of time. For the case of Industrial Relations Disputes in the first level, Law Number 2 of 2004 has mandated the issuance of a court decisions within 50 (fifty) days after the first session (Article 103).

LEGAL CERTAINTY AND JUSTICE IN EMPLOYMENT DISPUTES SETTLEMENT

I. LEGAL CERTAINTY THEORY

According to Van Apeldoorn, legal certainty means the following:

a. The determination of laws that apply to concrete problems. With the stipulation of legal regulations to define concrete problems, litigants will know what provisions are used in a particular dispute from the outset;
b. Legal certainty means legal protection. Thus, the parties to a dispute can be protected from the arbitrariness of a judgment. Legal certainty ensures that only judges and lawmakers have the authority to determine life under the law.[14]

According to Utrecht[15], the law is tasked with ensuring legal certainty in human relationships. Legal certainty is known in two types, namely:

a. Certainty due to law. In this case, the obligations of one entity to another under the law is made certain. For example, with the existence of a temporal statute of limitations (*verjaring*) as stated in Article 78 of the Criminal Code, then the right of the government to prosecute a crime is limited to a particular timeframe;
b. Certainty in or from the law. Certainty from the law can be achieved if the law is defined by statues and codes. Certainty in the law entails creating regulations or methods that can be used as definite guidelines, and these methods must be enforced and carried out strictly.

Legal certainty is aimed to provide certainty in three different legal spheres: (1) how individual citizens can solve problems or disputes that may occur, (2) which public roles and institutions can provide assistance to citizens at large, and (3) how the authority of these public roles are defined and organized. Thus, legal certainty must be inherent to the law itself. One way to achieve legal certainty in is to adhere to written rules that can guarantee and serve as guidelines. Legal certainty is one of the

[14] PETER MAHMUD MARZUKI, PENELITIAN HUKUM 52-56 (2005).
[15] E. UTRECHT, PENGANTAR DALAM HUKUM INDONESIA 33-35 (1961).

basic legal values in addition to other basic legal values, such as the values of justice and the values of religion as stated by Radbruch.

II. THEORY OF JUSTICE: WHAT DOES IT MEAN FOR LABORS?

Among legal experts, it is generally understood that the law has three main objectives, namely:

a. Justice;
b. Legal Certainty or zekerheid;
c. Usability.

Justice is commensurate with balance and propriety (equity), as well as fairness (proportionality) while legal certainty is related to order and peace. Meanwhile, usability can guarantee that all of these values will bring peace to life together. Poerwadarminta[16] emphasized that justice comes from the word "just", which means impartial, not arbitrary, and sensible.

The terminology of justice according to the nature (deeds, treatment) that is fair defends the rights and obligations of the community, a just situation in the life of the community. The purpose of the law cannot be separated from the ultimate goal of the life of the nation, state and society that can be separated from the values and philosophy of life of the society itself, namely justice. In addition, there are also forms of good, namely honesty, loyalty and generosity. Another opinion, justice is seen as a good that includes all virtues such that justice approaches the notion of an ideal. For Aristotle, justice must be distributed by the state to all people, and the law has the duty to guard justice so that justice will reach everyone. Aristotle further stated that justice is a political stance which forms the basis of state regulations and these rules are the rules of what is right. Here people must control themselves from *pleonexia*, which is to benefits themselves by seizing what belongs to others, or refusing to give what should be given to others. Aristotle approached the problem of justice in terms of equality. In this connection Aristotle distinguishes two forms of justice:

[16] WJS PORWADARMINTA, KAMUS UMUM BAHASA INDONESIA, 567-568 (1982)

a. Distributive justice or *justitia distributiva*; Distributive justice ijustice given to each person based according to their respective rights. Distributive justice plays a role in the relationship between society and individuals, which is the principle of justice according to equanimity rather than equality. Equanimity obliges the leader of a community to distribute responsibilities, functions, and rewards proportionally according to skills and services provided by each member of a community;
b. Cumulative Justice or *justitia cummulativa*; Cumulative justice is justice received by each member regardless of their individual form of service. This justice is based on transactions (*sunallagamata*) whether voluntary or not. This justice occurs in the field of civil law, for example in agreements to exchange;
c. Corrective Justice (*iustitia creativa*); Corrective justice focuses on correcting wrongs. If a rule is violated or an error is made, corrective justice seeks to provide adequate compensation for the injured party; if a crime has been committed, then the appropriate punishment needs to be given to the offender. However, injustice will result in disruption of "equality" that has been established or has been formed. Corrective justice is tasked with restoring equality. From this description it appears that corrective justice is a judicial area while distributive justice is a field of government;
d. Protective Justice ((*iustitia protectiva*); Protective justice is justice that provides protection to everyone in society such that no one is treated arbitrarily.

III. WORKERS AND LABORS

The Definition of workers/laborers is very broad, that is, every person who does work, both inside and outside of the employment relationship, the latter of which has been inappropriately referred to as “free laborers”[17]. The definition of workers/laborers provided by Article 1 Paragraph (3) of Law Number 13 of 2003 includes anyone who works in order to receive wages or

[17] IMAM SOEPOMO, HUKUM PERBURUHAN BIDANG HUBUNGAN KERJA 33-40 (2001).

other forms of compensation. This definition is narrower compared to the definition of labor in Article 1 Paragraph (2) which states:

> "Everyone who is able to do work to produce goods and/or services is good for meeting their own needs and for the community."

The definition of labor includes workers/laborers, civil servants, people who are looking for work, and people who are free professionals such as lawyers, doctors, traders, and tailors. In other words, a person is referred to as a worker/laborer if he/she does work to fulfill the orders of another person and, in exchange, receives wages or other forms of compensation. Workers who work under the orders of others by receiving forms of remuneration but not in an employment relationship are not workers.

THE SCOPE OF THE ABSOLUTE COMPETENCE OF THE INDUSTRIAL RELATIONS COURT IN EMPLOYMENT TERMINATION CASES

The settlement of labor disputes in Indonesia after Indonesian independence was initially regulated by the Republic of Indonesia Emergency Law Number 16 Year 1951 concerning the Settlement of Labor Disputes[18] which affirmed the definition of labor disputes. Law Number 16 Year 1951 was amended by the Republic of Indonesia State Law Number 22 Year 1957 concerning the Settlement of Labor Disputes[19] which was amended again by the Republic of Indonesia State Law Number 2 Year 2004 concerning the Settlement of Industrial Relations Disputes. Law Number 2 Year 2004 instituted a number of changes including the formation of the Industrial Relations Court, which replaced the Regional

[18] Republic of Indonesia, Emergency Law Number 16 of 1951 concerning the Settlement of Labor Disputes (1951).

[19] Republic of Indonesia, Law Number 22 of 1957 concerning the Settlement of Labor Disputes (1957).

Level Labor Relations Dispute Settlement Committee as well as the National Labor Relations Dispute Settlement Committee, because these committees have been deemed inadequate for the purposes of resolving labor relations disputes nationally.

However, these changes have been inadequate in defending the rights of workers or laborers. While the competence of the Industrial Relations Court in resolving industrial relations disputes is contained in the provisions of Article 56 of Act Number 2 of 2004, this contrary to the 1945 Constitution of the Republic of Indonesia. According to Article 56 Law Number 2 of 2004, the Industrial Relations Court has the duty and authority to examine and decide:

a. in the first level regarding rights disputes;
b. at the first and last level regarding interest disputes;
c. at the first level regarding termination of employment disputes;
d. at the first and last level regarding disputes between trade unions/labor unions in one company.

The definition of rights disputes is regulated in the provisions of Article 1 rate 2 Number 2 of 2004, which is a dispute arising from differences in interpretation between workers and employers on matters that have been regulated in laws and regulations, whether in law, agreements work, company regulations, or collective labor agreements. The difference in interpretation could occur because of the ambiguity of explanations in the laws and regulations in question and or differences in the assessment of a legal fact (legal facts). As an example, a termination of employment that is carried out arbitrarily or against the law is null and void; hence, in such cases, dismissed workers/laborers must be re-employed by their respective employers. In practice, however, employers tend to be reluctant to resume employment because of an acrimonious relationship with their employees. Hence, in this case, an employee remains dismissed although the law stipulates otherwise.

Article 1 rate 3 Number 2 of 2004 governs disputes arising in employment relations due to causes that have not been regulated in laws, work agreements, company regulation, or any other legally binding agreements. Such disputes have included disputes regarding the provision of pickup buses for workers, disputes regarding uniform procurement for workers or laborers. These disputes are non-normative insofar as they are

unregulated in laws, work agreements, company regulations, or collective labor agreements

Termination of employment disputes are the most common in the Industrial Relations Court. Based on the provisions of Article 1 rate 4 Number 2 of 2004, disputes regarding termination of employment are disputes arising from the lack of conformity of opinion regarding the termination of employment relations carried out by one of the parties.[20]

Based on the provisions of Article 1 rate 5 Number 2 of 2004, disputes between trade unions/labor unions are disputes between trade unions and other trade unions in only one company, because there is no agreement regarding membership, implementation of rights, and work-union obligations. This occurs as a result of Republic of Indonesia State Law Number 21 of 2000 concerning Trade Unions/Labor Unions (Republic of Indonesia State Law Number 21 of 2000 concerns Trade Unions/Labor Unions 2000) which do not provide restrictions on the number of unions or trade unions allowed in a single company. Based on legal theory, there are two labor disputes, namely: disputes over rights and disputes over interests. Iman Soepomo states that labor disputes consist of rights disputes (*rechtsgeshil*) and interest disputes (*belangengeschil*)[21]. According to H.M. Laica Marzuki, there are two types of disputes that characterize labor cases, namely:

a. Cases of rights disputes (*rechtsgeschil*, conflict of rights) that adhere to the absence of such an agreement, emphasize the legal aspect (*rechtsmatigheid*) of the problem, mainly concerning the imposition of promises (defaults) on work agreements, a violation of labor laws and regulations;
b. Cases of disputes (*belangeschillen*, conflict of interest) that adhere to the absence of understanding regarding the work conditions and/or conditions of labor, especially concerning economic improvement and accommodation of the lives of workers. Such disputes emphasize the *doelmatigheid* nature of the disputing parties.[22]

Regarding the two opinions, the author draws the conclusion that the type of industrial relations dispute in letter (C.) Disputes regarding

[20] HIDAYAT MUHARAM, PANDUAN MEMAHAMI HUKUM KETENAGAKERJAAN SERTA PELAKSANAANYA DI INDONESIA 66-69 (2006).

[21] *Supra* note 17, at 114-115

[22] *Supra* note 6, at 211-213

termination of employment are arguably contained within rights disputes.[23] Furthermore, it is highlighted that, in a dispute over rights, the law is violated, not implemented or interpreted differently by the disputing parties. The author considers that Article 56 of Act Number 2 of 2004 is redundant in formulating the types of industrial relations disputes.[24] Employment termination disputes are disputes that arise as a result of working relationships, either because of defaults on employment contracts or violations of laws, company regulations, or collective labor agreements. Hence, employment termination disputes remain an inseparable part of rights disputes.[25]

This study argues that disputes between trade unions in a single workplace are basically disputes between one group of workers with another group of workers without involving employers. Thus, such disputes are outside of the competence scope of the Industrial Relations Court, because the IRC is a special court established in a district court that has the authority to examine, hear and give decisions on industrial relations disputes (Article 1 number 17 of Act Number 2 of 2004). When considering the judicial powers outlined for the General Courts, Religious Courts, Military Courts, and State Administrative Courts according to Article 10 Paragraph (1) of Law Number 14 of 1970, such provisions contradict Article 1 number 17 of Act Number 2 of 2004. Article 10 Paragraph (1) of Law Number 14 Year 1970 declare that disputes between trade unions in one company should only be resolved within a general court rather than an industrial court. Because the employers have minimal industrial relations actors, disputes between trade unions in a single workplace should be resolved in the general court environment, namely the District Court. The absolute competence of the District Court is to examine, decide and settle criminal cases and civil cases at the first level. (Article 50 of Law Number 2 of 1986). Disputes between trade unions/labor unions in one company are classified civil matters, so it should be the authority of the District Court.

Interest disputes cannot also be resolved at the industrial relation court because the IRC's authority is to examine, hear and give decisions on industrial relations disputes. (Article 1 number 17 of Act Number 2 of 2004). According to the author, conflicts of interest can only be resolved

[23] ALOYSIUS UWIYONO, HAK MOGOK DI INDONESIA 57-60 (2001).
[24] *Id.*
[25] *Id.*

through non-litigation channels, namely alternative dispute resolution (ADR) which consists of mediation, conciliation or arbitration. The existence of ADR is based on a paradigm to solve existing problems and not to win cases. ADRs tend to solve disputes by finding a win-win solution in the form of a policy. That is, one party does not insist on winning the case, but resolves the problem. The author also found the fact that the formulation of Article 56 of Act Number 2 of 2004 is redundant and contrary to Article 24 Paragraph (2) of the 1945 Constitution of the Unitary State of the Republic of Indonesia in conjunction with Article 10 Paragraph (1) of Law Number 14 of 1970 concerning judicial environment. Article 24 of the 1945 Constitution of the Unitary State of the Republic of Indonesia reads as follows:

a. Judicial power is an independent power to conduct justice in order to uphold law and justice;
b. Judicial power is carried out by a Supreme Court and a judicial body under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court;
c. Other bodies whose functions are related to judicial power are regulated in law.

The formulation of Article 1 point 17 of Act Number 2 of 2004 does not properly equate General Justice with the District Court because the District Court is an agency that implements the judicial system in the form of examining and adjudicating cases. The General Courts cannot be equated with the District Courts and vice versa, because the General Court is a process in establishing and finding laws, while the Civil Court is an institution for enforcing the law.

The Industrial Relations Court should only be authorized to handle cases of rights disputes, including employment termination disputes. Interest disputes can only be resolved through non-litigation channels, namely alternative dispute resolution (ADR) which consists of mediation, conciliation or arbitration, by seeking a win-win solution in the form of wisdom and focusing on *doelmatigheid* aspects of the problems that occur. Disputes between trade unions/labor unions in one company are basically disputes between workers, without involving employers so that they can be classified into civil cases, should be the authority of the General Justice environment, namely the District Court. The judicial overreach of the

Industrial Relations Court thus results in a lack of legal protection for workers who deserve justice and legal certainty. The Industrial Relations Court which is expected to be an institution intended by Article 24 of the 1945 Constitution of the Republic of Indonesia to conduct justice in order to enforce law and justice will not succeed in providing legal certainty and justice for workers.

CONCLUSION

At this final part, it is concluded that the competency scope of the Industrial Relations Court based on the provisions of Article 56 of Act Number 2 of 2004 concerning Labor is too excessive; thus, the Industrial Relations Court should only have the duty and authority at the first level to settle the employment termination disputes. The authors suggest the following steps to be taken to restore proper judicial competency: the Government and the House of Representatives need to conduct a legislative review for Law Number 2 of 2004 concerning employment. A judicial review should clarify the competency of courts that resolve labor-related disputes in order to provide legal assistance to workers/workers as well as maintaining legal certainty and justice.

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Quote

All labor that uplifts humanity has dignity and importance and should be undertaken with painstaking excellence.

Martin Luther King, Jr.