

The Comparison of Civil Procedure and Industrial Relations Courtprocedure

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Abstract: *The Industrial relations dispute which is resolved through the Industrial Relations Court puts the workers/laborers against the employers and bases their formal source of law on the Article 57 of Law No. 2/2004 which basically uses the civil procedure except under special regulation. The analysis in this study shows that the implementation of civil procedure actually contravenes the labor law. The characteristics of the Industrial Relations Court procedure differs from the civil procedure.*

Keyword: *characteristics; comparison; Industrial Relations Court; procedural law*

INTRODUCTION

As the actors in the industrial world, the workers and the employers must cooperate well and maintain a good relationship with each other in accordance with the initial purpose of the industrial relations' establishment. A harmonious industrial relations between the workers and the employers are expected to keep going as a synergy to achieve the goals set by the organization. Without a good cooperation and a harmonious industrial relation between them, it is not possible for an organization, on a small scale, or a country, on a large scale, to achieve their ideals and expectations. On the top of that, in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia states that: "Subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare... and social justice... and achieving social justice for all the people of Indonesia". This paragraph contains the development goals in the field of labor affairs which are also as a part of the National development.

The legal connection between the workers and employers begins with the making of employment agreement both written and verbally. Whereas, in the implementation of the agreement containing the rights and obligations of the both parties some problems often arise. If there is no mutual understanding and there are some difficulties in resolving the problem, these can eventually lead to a dispute between the parties. In English, the term used for this problem are *conflict or dispute. A Dispute, conflict or controversy; or right, claim, or demand on one side, conflict of claims, claims by claims or allegations on the other. The subject of litigation; the matter for roommates a suit brought and upon the which issue is joined, and in relation to the which jurors Witnesses are called and examined. See cause of action; claim, controversy; Justiciable controversy; labor dispute.*¹

The communities have various ways to resolve the disputes they face, from the dispute settlement by a negotiation between the parties, with the help of other people or neutral third parties and so on.² If the dispute settlement in such a way cannot reach an agreement, accordingly, the parties will take the conflict to the court. Especially, regarding the disputes occurred between the parties in industrial relations since the issuance of Law No. 2 of 2004 (hereinafter referred to as "Law No. 2/2004") a special court has been formed and named as the Industrial Relations Court (hereinafter referred to as "IRC") as formulated in Article 1 Number 17 of Law No. 2/2004: Industrial Relations Court is a special court established in the district court environment that has the authority to examine, adjudicate and give a decision on industrial relations dispute. The industrial relations dispute itself is formulated in Article 1 Number 1 of Law No. 2/2004 as a disagreement that lead to a conflict between the employers and the association of entrepreneurs with the workers/laborers or the labor unions due to the conflict of rights, conflict of interests, conflict of employment termination and the conflict between the labor unions in a company.

As a judicial body, the IRC also has the competencies which differentiate it from the others. The presence of the IRC is expected to provide a solution to the industrial relations dispute which all this time has not successfully provided the best solution for the industrial relations actors.

¹ Henry Cambell Black, *Black's Law Dictionary*, St. Paul Minnesota: West Publishing Co., 1979, p. 424.

² Lalu Husni, *Penyelesaian Perselisihan Hubungan Industrial Melalui Pengadilan dan di luar Pengadilan*, RajaGrafindo Persada, Jakarta, 2005, p. 7.

The presence of IRC as stipulated in Law No. 2/2004 (effective since January 15, 2006 through the Government Regulation in Lieu of Law No. 1 of 2005) was initially welcomed with great enthusiasm by the citizens as proved by the number of lawsuits filed.

It was also indicated that most of the lawsuits filed to the IRC did not meet the requirements and there were major lacks in the formal requirements, namely the requirement for filing a lawsuit. Whereas, the absolute competence of the IRC as stated in Article 56 of Law No. 2/2004 are: IRC has the duty and authority to examine and decide: a. At the first instance concerning conflict of rights; b. At the first and last instance concerning conflict of interest; c. At the first instance concerning conflict of employment termination; d. At the first and last instance concerning conflict between labor unions in a company. The absolute competencies of the IRC which include the four types of dispute, according to Wijayanto Setiawan, are contradictory with the intention of the lawmaking. The characteristics of labor disputes actually consist of only 2 (two) types, namely conflict of rights (*rechtsgeschil*) and conflict of interest (*belangengeschillen*) can neither be less or more and will not change until whenever.³

On the basis of the formulation of the law, the industrial relations dispute contains some elements, such as: First, the subjects of the conflict are the workers/laborers, labor unions and employers/entrepreneur's association; Secondly, the objects of the conflict are conflict of rights, conflict of interest, conflict of employment termination and conflict between the labor unions in a company. From the elaboration above, it signifies that the industrial relations dispute arises from the existence of industrial relations between the parties. Therefore, the industrial relations between the parties is a *conditio sine quanon* for the emergence of industrial relations dispute. Without the industrial relations between the parties, there will be no industrial relations dispute. Article 1 section 1 of Law No. 2/2004 formulates an industrial relations dispute as: the difference of opinion which result in conflict between the employers or the entrepreneurs association with the workers/laborers or the labor unions due to conflict of rights, conflict of interest, conflict of employment termination and conflict between the labor unions in a company.

The IRC, which has been effective since 2006, is definitely equipped with the formality requirement for pursuing court proceeding at the judiciary. The rules and the

³ Wijayanto Setiawan, *Pengadilan Perburuhan Indonesia*, Sidoarjo, Surabaya: Laras, 2007, p. 196.

direction for conducting litigation are intended for the parties and anyone involved in the IRC to be able to carry out their roles in a clear form.

In order to understand the Industrial Relations Court procedure, it is not enough to only study the articles stated in Law No. 2/2004 and the explanation that follows, but also it is necessary to understand the characteristics of Industrial Relations Court procedure. For example, the results of *the Industrial Relations Dispute Settlement Research through the Industrial Relations Court* by the Faculty of Law, Universitas Airlangga in 2006, which in one of the conclusions states that there is a disharmony between the Law No. 2/2004 with the Labor Law. This disharmony is an issue that arises outside the four absolute competencies of the Industrial Relations Court.⁴ This conclusion corresponds well with the opinion that a revision for the Law No. 2 of 2004 concerning the Industrial relations dispute Settlement is deemed necessary to be a priority of the National Legislation Program which begins in the academic drafting. Through the revisions, it is expected that the Law can be more comprehensive, thus able to reflect the *ratio legis* of the legal certainty and justice in an effort to realize a fast, appropriate, fair and inexpensive judiciary which is based on Pancasila values.⁵

On the basis of this fact, following the advice of the legal experts in connection with the Industrial Relations Court procedure, several possibilities raise, such as:

1. Using the applicable procedural law in the General Judicature with the additions and deductions without statutes of limitation and proportionately justice.
2. There is no harm if the procedural law used in the case hearing of an industrial relations dispute uses the procedural law that applies to the civil cases.
3. Creating and using procedural law specifically regulated for industrial relations dispute.

Of the three possibilities, the last suggestion is more appropriate, because the procedural law as a formal law should be formulated on the basis given by the respective material law. Considering the Industrial Relations Court procedure the same position as the civil procedure is inappropriate. It must be realized that "in front of the IRC, the material law and the procedural law must reflect its own characteristics. Although in the Article 57 of Law No. 2/2004 emphasizes that the procedural law that applies to the IRC is

⁴ Machsoen Ali dkk., *Penyelesaian Perselisihan Hubungan Industrial Melalui Pengadilan Hubungan Industrial*, Surabaya: Laporan Penelitian Universitas Airlangga, 2006, p. 37.

⁵ Christina NM Tobing, "Menggagas Pengadilan Hubungan Industrial Dalam Bingkai Ius Constituendum Sebagai Upaya Perwujudan Kepastian Hukum Dan Keadilan", *Jurnal Hukum dan Peradilan*, Volume 7 No. 2 Juli, 2018, p. 27.

a procedural law that applies to court in the General Judicature environment, it does not mean that the civil procedure can *automatically* be applied in pursuing court proceedings at the IRC, since the Industrial Relations Court procedure has its own characteristics which can be different from the civil procedure. Thus, the interesting *key problems* to be researched in depth is: the comparison of civil procedure and Industrial Relations Court procedure.

METHOD

Basically, this research is a normative research. As Terry Hutchinson argues: *Doctrinal Research: research which provides a systematic exposition of governing rules a particular legal category, analyzes the rational between rules, explosive areas of difficulty and, perhaps, predicts future developments.*

*Theoretical Research: research which is more complete understanding of the conceptual bases of laws and procedures that touch on a particular area of activity.*⁶ The relevance of doctrinal research with legal research paradigm is further elaborated by Terry as follows: " *Paradigm forms a model or pattern based on a set of rules that define boundaries and successful specifications within those boundaries.*"⁷ The approach used is the *statute approach*, and the *conceptual approach*.

ANALYSIS AND DISCUSSION

The IRC Procedure is a formal law which is essentially included in the civil law. As stated in Article 57 of Law No. 2/2004 that the procedural law that applies to the IRC is a procedural law that applies to court in the General Judicature environment, except those specifically regulated in this law.

In the civil law, the relationship between the formal law and the material law is as stated by the Boss:⁸

Het materiele recht regelt relaties tussens person (...) Als zulke regels overtreden worden, moet er iest gebeuren: het materiele recht moet 'gehandhaafd' worde, moet er iest gebeureb: het materiele recht moet 'gehandhaafd' worden en dat gebeurt in een process. Zo'n proceses the weer geregeld en die regent heten 'formeel recht' (Material law regulates the relations between people (...). If such rules are violated,

⁶ Terry Hutchinson, *Researching and Writing in Law*, Australia: Lawbook. Co, Queensland University, 2002, p. 9.

⁷ *Ibid*; p. 10-11.

⁸ Purnadi Purbacaraka dan Soerjono Soekanto, *Aneka Cara Pembedaan Hukum*, Bandung: Alumni, 1980, p. 28-29.

something must happen: material law must be enforced and that happens in a court proceeding, the proceeding is regulated and the rules are called the 'formal law').

We need to consider the opinion of Sjahran Basah who includes formal law as one of the elements of the judiciary in addition to its material law. Rochmat Soemitro also argues about the elements of judiciary which will lose their *theoretical and practical validity* as long as a formal law is not added as the element of judiciary.⁹ following is a comparison table of the elements of judiciary presented by Suparto Wijoyo:¹⁰

Table 1. Elements of the Judiciary in general

According to Rochmat Soemitro	According to Sjachran Basah
a. the existence of an abstract law which is binding in the public and can be applied to a problem;	a. the existence of law that can be applied to a problem;
b. the existence of a concrete jurisdictional dispute;	b. the existence of a concrete legal dispute;
c. there are at least two parties;	c. there are at least two parties (<i>audi alterum partem</i>);
d. the existence of a judicial apparatus authorized to settle disputes.	d. the existence of a judicial body that has the authority to decide on a dispute (<i>nemo index in cause</i>);
	e. the existence of formal law for elucidate (<i>rechtstoepassing</i>) and discover (<i>rechtsvinding</i>) "in concreto" law to guarantee the adherence to the material law (a) above.

Information: Element (a) to (d) are the same, whereas element (e) is an addition.

The addition of element e [the existence of formal law for elucidating (*rechtstoepassing*) and discovering (*rechtsvinding*) "in concreto" law to guarantee the adherence to the material law] is based on the reasons to ensure the implementation of judicial elements from a to d. Indeed, the judiciary without the existence material law will be *paralyzed*, because it does not know what it will embody. Otherwise, the judiciary without the formal law will be *wild*, because there are no clear boundaries in exercising its authority.¹¹ Thus, the procedural law regulates the law enforcement whose material has been determined in its material law. However, this does not mean that the entire procedural law only contains the laws regarding the implementation of court proceeding strategies. In the procedural law, the material law containing the rights of the parties to pursue court proceeding is also found. Procedural law as a formal law also contains *material* and *formal* elements. The material elements of procedural law in the legal

⁹ Rochmat Soemitro, *Masalah Peradilan Administrasi Dalam Hukum Pajak di Indonesia*, Cetakan Keempat, Bandung: Eresco, 1989, p. 4-6.

¹⁰ Suparto Wijoyo, *Karakteristik Hukum Acara Peradilan Administrasi*, Cetakan Kedua, Surabaya: Airlangga University Press, 2005, p. 15.

¹¹ Rochmat Soemitro, *Op.cit*, p. 31

literature (Dutch) are called '*actienrecht*' (*substantive law of procedure*), a provision that regulates the legal connection that occurs due to pursuing court proceeding, the same as a civil procedure which is only intended to ensure the adherence to the material civil procedure with the help of the judge.¹²

1. The occurrence and invalidation of lawsuit regarding rights or prosecution.
2. The legal actions to rebut or disclaim.
3. The actions to enforce law or exercise rights.
4. The influence of procedural actions
5. The proof
6. The decision.

The procedure law formally regulates the procedures that must be considered in the court proceedings, namely regulating the strategy to exercise the authority as prescribed in the material element, for example about the procedure to file a judicial appeal. On the basis of these two elements, the procedural law principally regulates the execution of the dispute settlement for the sake of the people so that the action of "*eigenrichting*" can be prevented.

The procedural law in the legal literature is also known as the adjective law as a set of substantive laws. Considered as substantive law because it is based on the consideration to not be interfered with the statement of the difference between the material procedural law (*materiele procesrecht*) and formal *procedural* law (*formele procesrecht*). Adjective law by Henry Campbell Black is interpreted as follows:¹³

Adjective Law: The aggregate of rule of procedure of practice. As opposed to that body of law which the courts are established to administer (called 'substantive law'), it means the rule according to which the substantive law is administrated,... That part of the law which provides a method for enforcing or maintaining rights, or obtaining redress for their invasion... Pertains to and prescribes practice, method, procedure or legal machinery by which substantive law is enforced or made effective.

*Substantive law is defined as follows:*¹⁴

The part of law which creates, defines, and regulates rights, as opposed to 'adjective of remedial law', which prescribes method of enforcing the right or obtaining redress for their invasion. That which creates duties, right and obligations, which procedural or remedial law'. Prescribes methods of enforcement of right or obtaining redress... The basic law of right and duties (...) as opposed procedural law (...)

¹² Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Cetakan Pertama, Yogyakarta: Liberty, 1993, p. 2

¹³ Henry Cambell Black, *Op. Cit.*, p. 38, dalam edisi 1991, p. 25-26.

¹⁴ *Ibid.*, 1991, p. 1281-p. 997.

Based on the above formulation, it can be understood that the procedural law as a formal law is a normative guidance in disciplining and utilizing judiciary, including in this case is the Industrial Relations Court procedure. In order to carry out its functions, IRC needs a procedural law to be applied or implemented to the IRC.

Essentially, the characteristic of procedural law is to serve the material law. The IRC procedure must be dedicated to the labor law as its material law. The labor law has the characteristic which are different from the civil law. Due to the existence of these different characteristics, "partially" the dedication of formal law to the material law carries its own specifications as the special *characteristic of the* procedural law as summarized in the following table:

Table 2. Characteristics of IRC Procedure and Civil Procedure

No.	Description	Industrial Relations Court Procedure	Civil Procedure
1.	Subject's benchmark: Parties	Workers/Laborers x Entrepreneurs/ Labor unions x Entrepreneurs/Association of entrepreneurs Labor unions x Labor unions in a company (as stated in Article 1 number 1 of Law No. 2 of 2004)	Community members x community members Community members x administrative agencies or officials
2.	Causes of conflict's benchmark: Object	Conflict of rights; Conflict of interest; Conflict of employment termination; Conflict between labor unions in a company (as stated in Article 56 of Law No. 2 of 2004)	Civil case
3.	Basis of Judicial Examination (<i>toetsingsgronden</i>)	Labor Law	Unlawful acts (<i>onrechtmatige daad</i>), branch of trust (<i>wanprestatie</i>)

Source: Law No. 2/2004 and from various sources

The characteristic of IRC procedure has a specificity compared to the characteristic of civil procedure. In the IRC procedure, there are *benchmark of the subject* and *benchmark of the causes of conflict or object of dispute*. The subject's benchmark is the disputing parties between the workers/laborers, the labor union with the entrepreneurs/entrepreneur association, or other labor unions in a company, both of which must be heard (*audi alteram partem* or *eines mannes rede ist keines mannes rede, man soll sie horen alie beide* - both parties must be heard). The benchmark of the object of dispute involves some parties including: Conflict of rights, Conflict of interest, Conflict of employment termination and

Conflict between labor unions in a company. If the other forms of the object of the dispute, excluding the four disputes which is related to the action according to the civil law, arise it will be handled by the General Judicature.

The specific characteristics of civil procedure, in accordance with its principles according to Sudikno Mertousumo are:¹⁵

1. The judge waits.
... that is, the initiative to file a lawsuit regarding rights to be fully handed over to the concerned parties... If there are no lawsuit regarding rights or prosecution, then there is no judge (*Wo kein Klager ist, ist kein Richter; nemo judex sine actore*).
2. A Passive judge.
In examining the civil case, the judge is passive in the sense that the scope or extent of the dispute filed to the judge for examination basically is determined by the concerned parties and not the judge.
3. The open characteristic of the court hearing.
The court hearing basically is open to the public, which means that everyone is allowed to attend and listen to the examination of the court hearing.
4. Hearing both parties.
In the civil procedure, both parties must be treated equally, impartial and fairly heard.
5. The decision must be accompanied by reasons.
All court decisions must cover the reasons for the decision which is used as the basis for the adjudication.
6. A case cost.
7. No obligation to represent.

Understanding carefully about the principles of civil procedure will lead to a critical thinking that it is not easy to apply the provisions outlining that the Industrial Relations Court procedure using the civil procedure that applies to the General Judicature irrespective of any exceptions.

The difficulties of the implementation actually stem from the *characteristics* of the IRC procedure which is reflected in the principles of labor law that underlie the IRC procedure. Regarding the principles of the mentioned labor law namely:

- a. *the principle of legal safeguards.* This principle implies that the workers/ laborers are a weak party in dealing with the employers and need to be protected, so that any arbitrary acts will not occur.
- b. *the principle of equality of the workers and employers' position.* This principle put the two parties in the industrial relations in equal position.

¹⁵ Sudikno Mertokusumo, *Op. Cit.*, p. 9-16.

The principles of labor law which put the position and the purpose of IRC more as a comparison is the purpose of the establishment of the Administrative Court. According to Van Galen and Van Maarseven quoted by Suparto Wijoyo, in accordance with the function of the Administrative Court, namely:¹⁶ "*het bieden van (rechts-) bescherming tegen bestuurshandelingen*" - provides legal safeguards against the government actions", the principles of administrative law which are the "*kenmerkende*" of the Administrative Court procedure are:

- *Actieve rechter* (active judge);
- *Ongelijkheidscompensatie* (compensation due to a position inequality);
- *Uniteitsbeginsel* (principle of unity);
- *Non-cumulatie* (non-cumulation);
- *Vrij bewijs* (free evaluation of evidence);
- *Procesmondigheid* (verbal handling);
- *Vermoeden van rechtmatigheid* (*rechtmatig* presumption – the presumption of "legitimate" for the forecast of the validity).

In accordance with the absolute competence of IRC according to Law No. 2/2004, as the juridical-theoretical *implication* and *consequence* they are reflected in the principles of labor law in the IRC procedure in resolving industrial relations dispute. The industrial relations dispute settlement by the IRC based on Law No. 2/2004 remains bound to the principles of labor law underlying the IRC procedure. An industrial relations dispute is a dispute in the field of labor law which is born as a result of the implementation of labor law by industrial relations actors, thus the settlement should be based on the principles of labor law. This is important, because the procedural law regulates the law enforcement procedures who's the material has been stipulated in its material law. The procedural law (formal) is a means to implement the material law. The enforcement of material law by the formal law concretely takes place when the positive law is in effect as a regulation to be adhered. Therefore, providing justice in an industrial relations dispute means settling a dispute by applying the law, finding the *in concreto* law in an effort to maintain and guarantee the material law compliance as a *in abstracto* law with the procedures constituted by the formal law. It can also be said that the main function of the Industrial Relations Court procedure according to Law No. 2/2004 is realizing the *in abstracto* law

¹⁶ Suparto Wijoyo, *Op. Cit.*, p. 21-22.

into an *in concreto* law that binds the disputing parties in order to resolve the industrial relations dispute.

The IRC procedure in Law No. 2/2004 is stated in Article 81 up to Article 115. Therefore, the compositions of the provisions governing the settlement of industrial relations dispute and its procedural law are as shown in the following table:

Table 3. Law No. 2/2004

No.	Description	Article(s)	Total	Percentage
1	Chapter I: The general provisions	1 to 5	5 Articles	3.87%
2	Chapter II : The procedures for Industrial relations dispute Settlement	6 to 54	50 Articles	38.7%
3	Chapter III : Industrial Relations Court	55 to 80	26 Articles	20.1%
4	Chapter IV: The Disputes Settlement through the Industrial Relations Court	81 to 115	35 Articles	27.7%
5	Chapter V: The Administrative Sanctions and Criminal Provisions	116 to 122	7 Articles	5.6%
6	Chapter VI: Other Provisions	123	1 Articles	0.79%
7	Chapter VII: Transitional Provisions	124	1 Articles	0.79%
8	Chapter VIII: Concluding Provisions	125 to 126	2 Articles	1.6%
		total	126 Articles	

Source: Law No. 2/2004

Law No. 2/2004, containing the regulations concerning procedural law and Law No. 13 of 2003 (hereinafter referred to as "Law No. 13/2003") which constitutes some parts of the material law concerning labor law, can be enforced because the procedure for regulating the procedural law in the positive law can be grouped into two categories, namely:

1. The provisions for litigation procedures are regulated *individually* in the form of laws or other forms of regulation.
2. The provisions for litigation procedures are regulated *collectively* with its material law or by the arrangement and the competency from the body conducting the adjudicative process in the form of laws or other regulations.

Law No. 2 of 2004 follows the first group in enforcing the regulations regarding labor law specifically regulated in Law No. 13/2003 concerning Labor Affairs and other employment regulations. Article 136 section (2) Law No. 13/2003 states that:

In the event of the disputes settlement through the negotiation for consensus as referred to in section (1) is not achievable, the employers and the workers/laborers or

labor unions should resolve the industrial relations dispute through the settlement procedures for industrial relations dispute regulated by law.

In the Article 57 of Law No. 2/2004 which states that the applicable procedural law in the IRC is a procedural law that applies to courts in the General Judicature environment, except those specifically regulated in this law. Some of the exceptions to the procedural law as referred are:

- a. The Industrial Relations Court is a special court under the General Judicature environment, the structure of the judges consists of judges and ad hoc judges.
- b. Consisting of 4 (four) disputes
- c. The cases whose the court cost is less than Rp. 150,000,000, - are exempt from the court cost including the execution fee.
- d. The lawsuit is filed to IRC whose the jurisdiction is located around the worker's work place.
- e. A lawsuit by a worker for not accepting the employment termination, can be submitted only within a period of one year since the receipt of notification from the employer.
- f. A negotiation effort must be carried out.
- g. The judge is obliged to examine the contents of the lawsuit and if there are any incomplete documents, the judge will request the plaintiff to complete the lawsuit.
- h. In cases of conflict of rights and/or conflict of interest followed by the conflict of employment termination, the court must first adjudicate the conflict of rights and/or conflict of interest.
- i. Labor Unions and Entrepreneurs Organization can act as attorneys, to represent their members.
- j. Understanding the two kinds of judgement method, namely: ordinary examination and expedited examination.
- k. If in the first case hearing, the employer is clearly proven for not paying the wages of the workers during the suspension, the panel of judges must immediately render a preliminary order to pay the wages and exercise the rights of the workers, orders a prejudgment seizure, and these orders are non-appealable.
- l. There are the statutes of limitation that must be carried out.
- m. The case hearing is legitimate if it is performed by the panel of judges.

The provision, in fact, has caused a false interpretation, as if the IRC procedure is a Civil Procedure. The legal pursuers are divided into two categories, there are parties who are involved in the court proceedings in resolving the industrial relations dispute and tend hold the understanding that the procedural law is *identical* to the civil procedure. Otherwise, there are those who emphasize other *principle* differences, namely the existence of characteristics in the IRC procedure.

The IRC procedure according to Law No. 2/2004 should be studied in depth. Moreover, it has been pointed out that the IRC procedure has not been well understood,

and no less important is the awareness of the employers in complying with the IRC's decision. Understanding and realizing the existence of specificity and the difference between the IRC procedure and the civil procedure in resolving the induscase hearing relations dispute in the IRC body according to Law No. 2/2004 is absolute.

The following is the comparison of the civil procedure and IRC procedure which the writer concludes in the form of a table:

Table 4: The Comparison of Civil Procedure and IRC Procedure

Comparison	General Judicature	Induscase hearing Relations Court
Panel of judges	Do not recognize Ad hoc Judges	There must be 3 people consisting of 1 (one) judge as a chairman, 2 (two) Ad hoc Judges (from Labor Union and Association of Employers (APINDO)) (Articles 55 and 60 of Law 2/2004)
Types of Dispute	Only 2 types: branch of trust and unlawful act	There are 4 (four) types of disputes: Rights, Interest, Employment Termination, between from Association of Employers/Labor Unions in a company (Article 56 of Law 2/2004)
Steps of Settlement Process	The legal action: Appeal & Cassation	There is no appeal and only conflict of rights & employment termination that can be brought to cassation (Article 56 of Law 2/2004)
Filing a lawsuit	Submitted in the defendant's domicile (Article 142 of HIR)	Submitted to IRC at the workers/laborers' work place (Art. 81 Law 2/2004)
Pre-adjudication settlement efforts	Negotiations & peace efforts must be performed, and the evidence does not have to be prepared, but the lawsuit will still be examined (Article 130 HIR)	Mediation / conciliation must be carried out. Without the evidence that mediation/conciliation has been performed, then the lawsuit will be returned (Article 83 section 1 of Law 2/2004)
The obligations of the Judge against the lawsuit	There is no obligation for the judge, but the Chairman of the District Court can provide an advice in making the lawsuit for the success of the process (Article 119 & 132 of HIR)	The judge checks and if there are any incomplete documents, the Judge should request the Plaintiff to complete them (Article 83 section 2 of Law 2/2004)
Merger of disputes	There is no obligation for the court to adjudicate first	For conflict of rights/interests followed by a conflict of employment termination, the IRC adjudicates the conflict of rights/interests first (Article 86 of Law 2/2004)
Kinds of examination	Do not recognize expedited examination	There are 2 (two) types of ordinary examination (Article 89 to 97 of Law 2/2004) and

Preliminary Order	An appeal can be requested for a preliminary order (Article 185 section (1) and Article 190 section (1) of HIR)	expedited examination (Articles 98 to 99 of Law 2/2004) Recognize a preliminary order that is non-appealable (Article 96 of Law 2/2004)
Statutes of limitation for settlement efforts	The statutes of limitation is determined internally (Decree of the Chairman of the Supreme Court)	The Panel of Judges render the decision no later than 50 days (Article 103 of Law 2/2004)
The case hearing must be attended by the Panel of Judges	It is possible if the case hearing is performed by a single judge (with the permission the Chairman of the Supreme Court)	The case hearing is legitimate if it is carried out by the Panel of Judges (Article 92 of Law 2/2004)
Court costs	A court cost is charged except conducting litigation with free of charge under certain conditions. Small Claim Court of Decree of Supreme Court (PERMA SCC)/ Decree of Supreme Court No. 2/2015 - material lawsuit < Rp. 200,000,000,-	A court cost under Rp 150,000,000'- is free of charge
Attorney	Only lawyers/advocates can become the legal advisers (Article 31 of Law 18/2003)	Labor unions and entrepreneurs organizations can act as a legal adviser for the court proceeding in the Industrial Relations court to represent their members. (Article 87 of Law 2/2004)

Source: Law No. 2/2004 and from various sources

The Characteristics of IRC Procedure

Article 57 Law No. 2/2004 stipulates that, the procedural law that applies to the IRC is the Civil Procedure which applies to the Courts within the General Judicature environment except those specifically regulated in Law No. 2/2004. For this reason, it is necessary to know about the kinds of procedural law specifically regulated in Law No. 2/2004, and which procedural laws are applicable as a civil law.

The procedural laws specifically regulated in Law No 2/2004, according to the writer, are the general characteristics of procedural law at IRC which are different from the civil procedure, the differences are as follows:

1. The structure of the Panel of Judges. IRC is a special court within the General Judicature environment, the characteristic of the structure of the judges is tripartite, consisting of the judge and the ad hoc judges (Article 55 and 60 of Law No. 2/2004), whereas in the civil procedure there is no ad hoc judges proposed by the Labor Union and Entrepreneurs Organizations (the representatives of the disputing parties).

2. The provisions concerning the absolute competency regarding the various disputes and the adjudicative jurisdictions: a) at the first instance of conflict of rights and employment termination; b) at the first and last instance of conflict of interest and conflict between labor unions in a company. A civil procedure does not recognize a variety of disputes and does not restrict a particular case for an appeal/cassation request. The characteristics of various types of dispute and the authority of IRC are different matters in the implementation of the principle of the supervision of court decision through a cassation. In the IRC only conflict of rights and employment termination can be supervised through the Supreme Court. The IRC decision in the District Court, can only perform a legal remedie for the conflict of rights and employment termination that can be carried out through a cassation. Regarding the conflict of interests and conflict between labor unions in a company, a cassation cannot be carried out as stipulated in Article 56 of Law No. 2/2004.
3. The provision regarding the case costs. For the cases whose the cost is less than Rp. 150,000,000,-, the parties are exempt from the case costs including the execution cost (Article 58 of Law No. 2/2004). At a glance, the determination of the case costs does not cause any problems. In fact, in its practice, the determination still causes some issues.¹⁷ The civil procedure determines: the judicial principle by paying the case cost, in this case, the plaintiff should do it, later the referred cost will be the obligation of the losing party. For those who are not able to the pay, they can be exempt from paying the case cost by meeting certain requirements. In the principle of civil procedure, the disputes filed to the court are subject to fees. In IRC, based on Article 58 of Law No. 2/2004, they are obliged to pay for a lawsuit whose the case cost is above Rp. 150,000,000,-. The ratio legis to this provision is as means of protection to the workers/laborers who are involved in the industrial relations dispute and in the weaker position.
4. The provision regarding relative competence for the jurisdiction to file the lawsuit near the worker/laborer work place. The lawsuit is filed to the court whose the jurisdiction covers the workers' work place (Article 81 of Law No.

¹⁷ Juanda Pangaribuan, *Tuntunan Praktis Penyelesaian Perselisihan Hubungan Industrial*, Edisi Revisi, Edisi Pertama, Jakarta: BIS, 2010, p. 144.

2/2004). The provision in the civil procedure is as the principle of *actor sequitur forum rei*: the lawsuit is done in the defendant's domicile, if unknown, the lawsuit will be performed in the compromised location (Article 142 HIR and 118 RBg).

5. The provision regarding the statutes of limitation for filing a lawsuit. Law No. 2/2004 regulates that a lawsuit filed by the workers on the conflict of employment termination, can be filed within one year from the receipt of or notification from the employer (Article 82 of Law No. 2/2004). In the civil procedure, basically does not recognize statutes of limitation for the proceedings.
6. The provision for a record of negotiation. The negotiation efforts in an industrial relations dispute must be carried out, without the proof of negotiations, the employment agency that will register the dispute, will reject the file. Likewise, in the case of IRC, the IRC judge is obliged to return the lawsuit to the plaintiff, if the lawsuit is not completed with the record of settlement through mediation or conciliation. The records and the recommendations only function as the ticket to the IRC.¹⁸A settlement effort outside the court, must be taken, if the lawsuit is returned (Article 3, 4 and 83 section (1) of Law No. 2/2004). The provision regarding the record of settlement or in IRC concerning the record of settlement through mediation or conciliation, are rooted in the notion of:

The expected settlement is a settlement outside the court, as determined in Article 36 section (1) of Law No. 13/2003 in conjunction with Article 3 section (1) of Law No. 2/2004.

The civil procedure regulates that a negotiation is recommended and sought at each instance of settlement process, but the judge may not reject a case.

7. The provision for a *dismissal process*. Article 83 section (2) Law No. 2/2004 states that the Judge is obliged to examine the contents of the lawsuit and if there are some incomplete information, the judge should request the plaintiff to complete the lawsuit. The civil procedure does not have a provision that requires the judge to do so. The civil procedure only recognizes a provision that

¹⁸ Juanda Pangaribuan, *Op.cit.*, p. 132.

the Chairman of the Court can provide an advice and assistance in filing the lawsuit for the success of the settlement (Articles 119 and 132 of HIR, and Article 156 of RBg). In the civil procedure, there exists a Principle of Passive Judge (*Lijdelijkeheid van de Rechter*) and because in the IRC there is *admissal process*, then it shows the different characteristics from the civil procedure.

8. The provision regarding the two simultaneous disputes. Article 86 of Law No. 2/2004 stipulates that in the case of conflict of rights and/or conflict of interest followed by the conflict of employment termination, the IRC must first adjudicate the cases of conflict of rights and/or conflicts of interest. In civil procedure, there is no obligation for the court to first adjudicate one dispute against another.
9. The provision regarding the attorney. Law No. 2 /2004 gives a lenience to the Labor Unions and Employers Organizations to be able to act as an attorney, on behalf of their members (Article 87 of Law No. 2/2004). The civil procedure regulates that: Every person who intentionally carries out the duty of an advocate and acts as an advocate but in fact is not an advocate, provides a legal service in the form of a legal advice, a legal assistance, exercises authority, represents, assists, defends, and takes another legal action for the client's interests, can be sentenced to five years imprisonment and a maximum fine of Rp. 50,000,000,- (Article 31 of Law No. 18/2003).
10. The provision regarding the various types of examination. Law no. 2/2004 regulates the two types of examination in the court proceeding, namely: a) the ordinary examination (Article 89 up to 97 Law No. 2/2004 and; b) the expedited examination (Article 98 to 99 Law No. 2/2004. In civil procedure there is no expedited examination.
11. The provision concerning Preliminary Order. Article 96 of Law No. 2/2004 regulates that if in the first court hearing the employers is clearly proven for not paying the wages of the workers during the suspension, the panel of judges must immediately render a preliminary order to pay the wages and exercise the rights of the workers, orders a prejudgment seizure, and these orders are non-appealable. In civil procedure, there is no obligation for the judges to render a preliminary order in resolving a dispute. In its practice, the preliminary order is pronounced in the court hearing, not written separately

but in the court record. The preliminary order can be requested for an appeal along with an appeal request against the final decision (Article 185 sentence (1), Article 190 sentence (1) HIR and Article 20 sentence (1), Article 196 sentence (1) RBg, and Article 48 and Article 332 Rv). Normatively and in its practice, there is no a standard and strict manner to examine the preliminary injunction. Since there is no standard examination of the preliminary injunction, the provision of judicial practice now depends on the views and the wisdom of the judge handling the case, whether by issuing preliminary order that accepts or rejects or suspends the decision after examining the merits of the case or the decision is only briefly mentioned in the final decision.¹⁹

12. The provision regarding the statutes of limitation for the dispute settlement that must be carried out by the officials who has the judicial power, such as:
 - a) Within a maximum of 7 working days after receiving the lawsuit, the Chairman of the District Court must have appointed the panel of judges (Article 88 section (1) of Law No. 2/2004);
 - b) Within a maximum of 7 working days from the appointment of the panel of judges, the chairman of the panel of judges must have conducted the first court hearing (Article 89 section (1) of Law No. 2/2004);
 - c) If one of the parties is unable to attend the court hearing, the next court hearing should be scheduled on 7 working days from the date of delayed court hearing at the latest (Article 93 sentence (1) of Law No. 2/2004);
 - d) Within a maximum of 7 working days from the receipt of the urgent lawsuit from the applicant (expedited examination), the Chairman of the District Court should determines whether or not the application is granted (Article 98 sentence (2) of Law No. 2/2004);
 - e) The statutes of limitation of the answers and evidences from both parties in the expedited examination, may not exceed 14 working days (Article 99 sentence (2) of Law No. 2/2004);
 - f) The panel of judges are obliged to give a decision within a maximum of 50 working days from the first court hearing (Article 103 of Law No. 2/2004);

¹⁹ Lilik Mulyadi, *Kompilasi Hukum Perdata Prespektif Teoritis dan Praktik Peradilan*, Bandung: Alumni, 2009, p. 70.

- g) The deputy registrar must provide a decision notice no later than 7 working days after the decision is read out (Article 105 of Law No. 2/2004);
 - h) The associate registrar must publish the copy of the decision no later than 14 working days after the decision is signed (Article 105 of Law No. 2/2004);
 - i) The Registrar must send a copy of the decision no later than 7 working days after the copy of the decision is issued (Article 107 of Law No. 2/2004);
 - j) The court decisions have a permanent legal force if the cassation is not filed for a maximum of 14 working days after a decision has been sentenced (Article 110 of Law No. 2/2004);
 - k) The Registrar's Sub-Division must have submitted the application for cassation to the Supreme Court no later than 14 working days after receiving the cassation application (Article 112 of Law No. 2/2004);
 - l) The statutes of limitation of the settlement of conflict of rights or employment termination at the Supreme Court is no later than 30 working days after the application is received (Article 115 of Law No. 2/2004);
In civil procedure, generally, the settlement process is regulated internally based on the Decree of the Chairman of Supreme Court, except the cassation request to the Supreme Court (Article 46 to 34 Law No. 14 of 1985 jo. Law No. 5 of 2004).
13. The provision regarding a legitimate court hearing. Law Number 2 Year 2004 stipulates that the court hearing is legitimate if it is carried out by the panel of judges (Article 92 of Law No. 2/2004). In civil procedure, it is still possible to do a court hearing with a single judge based on the permission of the Chairman of Supreme Court.
14. The absence of appeal effort. Law No. 2/2004 does not recognize an appeal effort as the characteristic of IRC procedure which is different from the principle of civil procedure about the judicial examination in two agencies. As in Law No. 2/2004, there is no any appeal request against the decision of the IRC to the court, however only a legal remedy through a cassation request to the Supreme Court can be done. This is different from the principle of civil procedure that is based on the examination in two agencies (*Onderzoek in Twee*

Instanties) which means that if a party or all parties have an objection to the decision of the court of first instance, then they can file an appeal to the high court and then the high court will re-examine the case at the court of first instance.

CONCLUTION

The IRC procedure is based on the provision of Article 57 of Law No. 2/2004 which states that the procedural law applicable to the IRC is the procedural law applicable to the court in the environment of the General Judicature, unless otherwise specifically regulated under this law. Special regulation in Law No. 2/2004 is the characteristic of the IRC procedure that distinguishes it from the civil procedure. The characteristics of the IRC procedure are: a) the provision regarding the record of negotiation in the court is in the form of the record of settlement through mediation or conciliation; b) the provision regarding the *legal standing or* attorney, that is the labor unions and employers organizations can act as an attorney, to represent their members, c) the provision regarding the absolute competence; d) the provision regarding the preliminary order; e) the provision regarding the relative competence in the form of a lawsuit filing near the worker/laborer work place location, f) the provision for *dismissal process*; and g) the provision regarding the court cost.

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