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THE URGENCY OF REGULATING INJUNCTIONS IN INDONESIAN CIVIL PROCEDURE BILL

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ABSTRACT

The concept of injunction in common law countries is similar to the concept of provision, confiscation, and provisional determination so that the concept of injunction can be used to complete the deficiencies of provision, confiscation, and provisional determination. This research examines injunction arrangements in common law countries, in this case, the United States and Singapore, which are then transplanted into Indonesian law through the Indonesian Civil Procedure Bill. The research method was carried out normatively and then explained descriptively accompanied by a prescription on how provision, confiscation, and provisional determination should be regulated in Indonesia. Arrangements for provision, confiscation, and provisional determination are still scattered in various laws and even most of the Dutch colonial legacies are used without an official translation. This condition causes legal uncertainty that can be detrimental to justice seekers. The state's efforts in establishing a unique Indonesian civil procedural law can be seen through the Indonesian Civil Procedure Bill. This bill also contains a concept similar to an injunction. The bill, which is expected to eliminate legal uncertainty for justice seekers, still does not specify a concept similar to the injunction in Indonesia.

Keywords: confiscation; indonesian civil procedure bill, injunction, provision; provisional determination

1. INTRODUCTION

Het recht hink achter de feiten aan means that law is always left behind with society or things to be regulated. This condition is reflected in the development of law in Indonesia. Article II of the Transitional Rules of the Constitution of the Republic of Indonesia of 1945 states that all laws and regulations that existed during the colonial period are still valid as long as new ones have not been enacted. In everyday social life, there are still many community actions and behaviors that are governed by statutory regulations from the colonial period, including civil procedural law. Legislative regulations from the colonial era still exist and are used as the basis for proceedings in civil cases throughout Indonesia, either by *Het Herziene Indonesisch Reglement* (HIR) or *Rechtreglement voor de Buitengewesten* (RBg), or other laws that complement under certain conditions, such as AB and Rv.

At least Indonesia's civil procedural law politics is starting to look in a better direction, even though it is a few decades late, through the inclusion of the Indonesian Civil Procedure Bill into the 2022 National Legislation Program (the "Prolegnas").[1] This bill is expected to be able to solve Indonesian civil litigation problems such as the long duration of dispute resolution and the high costs of contract enforcement due to the length of time in litigation and the difficulty of executing decisions. However, the bill will still face several other problems that are felt by justice seekers, such as the potential for the loss or detention of evidence by the opposing party.[2] This is different from criminal procedural law which is public where the state apparatus is authorized by law to do things deemed necessary to maintain and guarantee justice. Steps such as searches, detention, confiscation, and other steps justified by the law are possible to take as long as they are carried out

1 Ardito Ramadhan, "Baleg DPR Tetapkan 40 RUU Prolegnas Prioritas 2022, Ini Daftarnya," KOMPAS.com, December 6, 2021, https://nasional.kompas.com/read/2021/12/06/21173181/baleg-dpr-tetapkan-40-ruu-prolegnas-prioritas-2022-ini-daftarnya.

2 Mosgan Situmorang, *Laporan Penelitian Hukum Tentang Penyederhaan Proses Peradilan* (Jakarta: Pusat Penelitian dan Pengembangan Hukum Nasional, 2009), 2.

properly and in accordance with procedures to prevent abuse of power.[3] In the context of civil disputes, it is not yet possible to carry out such steps, indirectly hindering the access of justice seekers to procedural justice due to the absence of an available mechanism as forcing efforts in a criminal case. Efforts to seek justice require a lot of money, time, and effort, so the process of seeking justice requires efforts that are fast and precise. The long dispute resolution process is prone to harming the rights and opportunities of the parties in seeking justice. Suffering and losses experienced by the parties can be prevented and avoided through the injunction mechanism. Through injunction, the examination efforts are carried out quickly and briefly based on valid and proper preliminary evidence before the commencement of the dispute examination. Actions to search the residence or secure evidence that has the potential to be lost or destroyed by other parties can be carried out through an injunction. In practice, the injunction must be carried out carefully to safeguard the interests of both parties.[4]

Equitable remedy according to Black's Law Dictionary is defined as non-monetary damage that is obtained when the monetary penalty is unable to cover the plaintiff's losses.[5] Injunction itself is only one type of equitable remedy from various equitable remedies developed in common law countries. Several types of equitable remedies besides injunctions, namely:

a. Specific performance is a court order that orders the debtor to do what has been promised or prohibits the debtor from doing what has been promised not to be done to the creditor or a third party.[6] Specific performance only talks about actions that must be taken or not carried out by the debtor, but it does not include payment for losses in the form of money.

b. Account of profits according to Black's Law Dictionary is one of the equitable remedies for people in a fiduciary duty to recover profits derived from violations of fiduciary duty.[7] One of the fiduciary relationships occurs in a Limited Liability Company (PT) between the board of directors and the PT they lead. Fiduciary comes from the Latin word, *fiduciarius* which means trust. Based on this understanding, fiduciary duty means holding something in trust for the benefit of others.[8] If it is related to the relationship between the board of directors and the PT, then the ownership of assets of the PT by the board of directors and transactions conducted on behalf of the PT are carried out in the interests of the PT that is being led. Board of directors who use the assets of a PT for their benefit, one of which is by enriching themselves, can be asked for an account of profits to the court to see whether the profits obtained are due to taking advantage of their position as the holder of the fiduciary duty of a PT.

c. Rescission or also known as the cancellation of the contract is an attempt to return the plaintiff to the condition before the contract.[9] At first glance, this rescission is similar to the concept of restitution which is also contained in United States (US) law. The difference between the two can be seen in Chapter 4 of Restatement Third, Restitution and Unjust Enrichment (R3RUE). Rescission is regulated in section 37 which basically states that rescission only applies if the defendant commits a material breach of the contract, so the plaintiff is entitled to the costs incurred when entering into the contract plus incidental damage.[10] Incidental damage is a cost incurred by a party to prevent direct impact due to a breach of contract by another party. For example, A buys a car from B, and B through his representative says that this car has no defects. After several days of use, it turned out that A found defects in the tires and the engine, so A took the car to the repair shop to be repaired. If not repaired, A may have an accident and require more medical expenses. The accident in the example above is a direct impact, while the cost of repairing the car at the garage is incidental damage. Restitution is regulated in section 38 of the

3 Ukkap Marolop Aruan, "Tata Cara Penyitaan Barang Bukti Tindak Pidana Menurut Kuhap," Lex Crimen 3, no. 2 (2014): 79.
4 Daniel Koh, *Law and Practice of Injunctions in Singapore* (Singapore: Sweet & Maxwell Asia, 2004), 3–5.
5 Bryan A. Garner, *Black's Law Dictionary*, Seventh Edition (Minnesota: St. Paul, 1999), 1297.
6 Thomas S. Ulen, "The Efficiency of Specific Performance: Toward a Unified Theory of Contract Remedies," *Michigan Law Review* 83, no. 2 (1984): 364.
7 Garner, *Black's Law Dictionary*, 20.
8 Ridwan Khairandy, *Pokok-Pokok Hukum Dagang Indonesia* (Yogyakarta: FH UII Press, 2017), 122.
9 Andrew Kull, "Rescission and Restitution," *The Business Lawyer* 61, no. 2 (2006): 576.
10 *Ibid*.

R3RUE which basically states that restitution only returns the plaintiff's position as before entering into a contract without replacing the possible loss of income or incidental damage;[11]

d. Rectification according to Black's Law Dictionary is a court order to amend the terms of the contract so that it is in accordance with the intent of the parties;[12]

e. Equitable estoppel is a doctrine that prevents one party from taking unfair advantage of another through action and the party taking unfair advantage influences another party to do something that ultimately harms him.[13] In the context of litigation, equitable estoppel means that the court will not give a decision in favor of the party claiming their rights using contradictory arguments, in simple language, namely deceiving the court.[14] This doctrine is based on an adage that says a person with arguments that contradict each other will not be heard by the court (*allegans contraria non est audiendus*).[15]

f. Subrogation is simply defined as creditor substitution. The new creditor will get all the rights relating to receivables from the former creditor.[16] The opposite of subrogation is delegation, which is debtor substitution. The concept of subrogation has also been adopted in Indonesian law through the Indonesian Civil Code in 3 articles, namely Article 1401 which provides a general definition of subrogation, Article 1402 which discusses subrogation based on agreements, and Article 1403 which relates to subrogation that occurs based on law. Subrogation based on the agreement occurs for 2 things, namely the creditor receives payment from a third party with the intention of changing his position as a creditor and the debtor borrows some money from a third party and uses the money to pay off his debt to the creditor so that the third party becomes a new creditor.[17] Subrogation under the law occurs when a creditor with privileges makes payments to other creditors, a buyer of an immovable property who pays off a seller's debt to a creditor where the immovable property has been bound by a mortgage, a person who pays off debts with other people, and heirs who pays the inheritance debt with his own money so that he gets special privileges.[18]

As previously explained, the basic concept of an equitable remedy is when the monetary damage is insufficient to fulfill the plaintiff's rights. In the development of law in the US, many factors determine when monetary damage is considered insufficient to fulfill the plaintiff's rights. The first factor relates to the difficulty of accurately calculating how much loss the plaintiff has suffered.[19] The basis of the punishment in the form of money is to restore the position of the plaintiff as before his rights were violated. In some cases, calculating money as a substitute for the plaintiff's rights that have been violated is very difficult. If the dispute is only related to debts between debtors and creditors, then the calculation of losses will be very easy. It will be a different story when the dispute relates to the destruction of the plaintiff's goods which have sentimental value as a result of the defendant's actions. Sentimental value cannot actually be assessed using money because it is a subjective feeling of the plaintiff. Another example can be understood through a brand dispute between PT A and PT B. PT A postulates that PT B's brand has similarities in principle with PT A's brand so that the presence of products with PT B's brand damages PT A's income. Often in such cases, PT A's advocates use profit calculation that PT A will get if the PT B brand is never marketed within a certain time scale (lost profit). If we examine further, actually the market performance of PT A's products is influenced by many things. The presence of PT B's brand may be one of the causes of PT A's decreased revenue but factors related to PT A's product quality compared to PT B's or PT B's marketing techniques which are better than PT A's also play an important role. It is these variables that are difficult to calculate regarding how far the impact of the presence of the PT B brand in a market has on the decline in PT A's income. The second factor that is no less important relates to morality. Monetary compensation indirectly allows a prohibition provided of giving compensation to

11 *Ibid*.
12 Garner, *Black's Law Dictionary*, 1280.
13 *Ibid*., 571.
14 T. Leigh Anenson, "The Triumph of Equity: Equitable Estoppel in Modern Litigation," *Rev. Litig*. 27 (2007): 384.
15 *Ibid*.
16 Daniel Greenberg, *Stroud's Judicial Dictionary of Words and Phrases* (London: Sweet & Maxwell Ltd, 2008), 2646.
17 *vide* Article 1401 *Burgerlijke Wetboek*.
18 *vide* Article 1403 *Burgerlijke Wetboek*.
19 Doug Rendleman, "The Inadequate Remedy at Law Prerequisite for an Injunction," *U. Fla. L. Rev*. 33 (1980): 349.

the aggrieved party.[20] If the judge can only give punishment in the form of money, the party who violates the rights of others only needs to pay the party who was violated without fear of experiencing other losses. This is exacerbated when the violating party has a high economic capacity so that payment of a certain amount is not a serious problem.

An equitable remedy is given when the monetary remedy is insufficient to fulfill the plaintiff's rights, so it can be concluded that an equitable remedy is always given in the form of a court order that punishes the defendant for doing something. Research conducted by Made Yoga Pramana Sugitha and I Nyoman Suyatna entitled "A Review of the Execution of Decisions That Punish People for Carrying Out an Act", published by Kertha Wicara in 2019 explains that HIR and RBg provide an alternative for a person that is convicted of carrying out a decision with nature of conducting certain actions can be replaced by payment of a certain amount of money through certain procedures.[21] The procedure for changing the execution is carried out through a request to the Chairperson of the District Court so that if it has been granted, the execution of the decision switches to execution of the payment of an amount of money which includes execution confiscation and auction to fulfill the contents of the decision.[22]

In connection with the topic of research on the implementation of injunction, several other writings have also discussed topics or similarities in research objects with those that the authors adopt. In research conducted by Richard r.W. Brooks and Warren F. Schwart entitled "Legal Uncertainty, Economic Efficiency, and The Preliminary Injunction Doctrine", published by the Stanford Law Review in 2005, reviewed legal certainty and the doctrines applied in the implementation of the preliminary injunction. The aspect that distinguishes between the author's writings and existing research relates to the application of injunction in civil procedural law in Indonesia with adjustments to the existing civil procedural law system, in contrast to previous research which in its writing attempted to analyze and evaluate to the implementation of the preliminary injunction in the established United States legal system. Then in another study entitled "Response, Class Actions, Civil Rights, and the National Injunction" written by Suzzete M. Malveaux in an article published by the Harvard Law Review, the authors wrote regarding the evaluation of the implementation of injunction in America with certain indicators, whereas in this paper, the authors try to examine the implementation of injunctions in the Indonesian civil law system based on Indonesian legal instruments themselves.

Based on the reviews conducted on this research, the authors found that there had been no studies discussing the regulation of the concept of equitable remedy in Indonesia and its implementation. This research just shows that there is a mechanism for implementing a sentence that is punitive in nature to carry out an act. This research will discuss the urgency of regulating injunction institutions as one of the institutions contained in the civil procedural law system as well as conceptualizing arrangements for implementing injunctions so that they can be implemented in Indonesia. This research is expected to fill in the gaps in studies regarding the prospects for injunction regulation and its implementation in Indonesia which have not been covered by the two previous studies.

2. METHOD

The research method used is library research or normative research. Literature research is research conducted by looking at the legal position in a particular legal issue. The legal position is obtained through in-depth research on national and/or international regulations, court or arbitration decisions, and the doctrines put forward by experts.

The research approach used is a comparative approach. A comparative approach is carried out through a comparison of efforts to guarantee civil rights in Indonesia such as provisions, confiscation, and provisional decisions with injunctions as one of the efforts to guarantee civil rights in common law countries. In addition to a comparative approach, the authors also use a case approach by showing one of the weaknesses in provisions in Indonesia through one of the decisions of the Supreme Court.

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20 *Ibid*., 352.

21 Made Yoga Pramana Sugitha and I Nyoman Suyatna, "Tinjauan Terhadap Eksekusi Putusan Yang Menghukum Orang Untuk Melaksanakan Suatu Perbuatan," *Kertha Wicara* 9, no. 1 (2019): 12–13.

22 *Ibid*.

The data used is secondary data. Researchers obtained secondary data through primary legal materials, secondary legal materials, and non-legal materials. According to Peter Mahmud Marzuki, primary legal material is legal material that has authority such as statutory regulations, official treatises in the formation of statutory regulations, and judges' decisions while secondary legal material is all publications about the law that are not official documents such as books, dictionaries, and legal journals as well as comments on court decisions.[23]

3. FINDINGS AND DISCUSSION

3.1. Arrangements for Injunction in the US and Singapore and Similar Concepts for Injunction in Indonesia

An injunction is a court order against one of the parties to do or not do something.[24] In countries with a common law legal system, compensation in civil penalties or civil remedies consists of two types, namely penalties in the form of money known in the US as legal remedies, and equitable remedies. Legal remedies are often referred to as remedies, while equitable remedies are referred to as reliefs. The following is the difference between a legal remedy and an equitable remedy:

Table 1. Difference Between Legal Remedy and Equitable Remedy

Indicator of a Difference	Legal Remedy	Equitable Remedy
Basis of the Granting	The basic principle of granting a legal remedy is compensation for the loss suffered by the plaintiff[25]	A new equitable remedy can be given when a legal remedy is felt to be insufficient.[26] Sufficient or insufficient indicators are based on the Cyanamid Test which will be explained in the next section
	- Restitution Restitution means the adverse party (defendant) returns the condition of the aggrieved party (plaintiff) to its original state before the adverse event occurred.[27]	Specific performance, the account of profits, rescission, rectification, equitable estoppel, and subrogation. These six types of equitable remedies have been explained in the introduction section

23 Peter Mahmud Marzuki, *Penelitian Hukum*, Revisi (Jakarta: Kencana, 2017), 349.
24 Morton Denlow, "The Motion for a Preliminary Injunction: Time for a Uniform Federal Standard," *Rev. Litig*. 22 (2003): 498–99.
25 Charles Alan Wright, "The Law of Remedies as a Social Institution," *University of Detroit Law Journal* 18, no. 4 (1955): 377.
26 Samuel L. Bray, "The System of Equitable Remedies," *UCLA Law Review* 63 (2016): 545.
27 E. Allan Farnsworth, "Legal Remedies for Breach of Contract," *Columbia Law Review* 70, no. 7 (1970): 1148.

Type	- Reliance Reliance means the loss suffered by the plaintiff as a result of believing in the promise of the defendant and then the defendant does not carry out the promise so the plaintiff suffers a loss.[28] Compensation is calculated based on the money that has been spent by the plaintiff because he believes the defendant will fulfill his promise. - Expectations The expectation is the advantage that should be obtained by the plaintiff if the defendant does not do things that cause the plaintiff to be unable to gain profit. The expectation is also referred to as loss of future earnings.[29]	
Compensation Method	The method of compensation through remedy is to calculate the loss and then pay it in money.	The compensation method through relief is to take certain actions

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The existence of an equitable remedy is based on the adage *nemo praecise cogi potest ad factum* which means that no one can be forced to take an action.[30] Based on this adage, the plaintiff has a high burden of proof if he wants to order his opponent to do something or not do something. Injunctions in US law are divided into three types, namely temporary restraining orders (TRO), preliminary injunctions, and permanent injunctions which are regulated in rule 65 of the Federal Rules on Civil Procedure ("FRCP"). In this case, the consideration in classifying the types of injunctions is generally based on the type and purpose of the order given, then the next classification is based on the duration of the order submitted.[31]

TRO is a form of injunction as stipulated in rules 65 and 65.1 in the FRCP which stipulates that TRO submissions need to be carried out through a written request regarding the matter that needs to be stopped, why it needs to be stopped, and what will happen if the matter is not stopped. In this case, it is necessary to explain what losses will occur if the injunction is not given in relation to certain actions or things carried out by the opposing party. Unlike other types of injunctions, TRO can be done without the need to notify the opposing party or *ex parte*. The basis of the regulation is that TRO relates to the need for efforts that must be implemented immediately in order to protect the rights and interests of the party submitting.

The preliminary injunction is another type of injunction that generally applies in the US. In the case of submitting a preliminary injunction, prior notification is required to the opposing party and a hearing must be held between the parties regarding the imposition of a preliminary injunction.[32] Preliminary injunction submissions are carried out before a final decision on a dispute is submitted to the court. If viewed from the point of view of the judiciary in Indonesia, the preliminary injunction has the same concept as an interlocutory

28 *Ibid*.
29 *Ibid*., 1149.
30 George Whitecross Paton, *A Textbook of Jurisprudence* (Oxford: Clarendon Press, 1972).
31 Denlow, "The Motion for a Preliminary Injunction," 498–99.
32 *vide* Rule 65 FRCP.

decision that is decided in the middle of a trial. In its development, the imposition of the preliminary injunction is based on several factors, namely; (1) whether the plaintiff has adequate legal remedies, (2) the losses incurred if the injunction is not applied, (3) the relationship related to the losses incurred if the injunction is not given with the losses suffered by the opposing party if the injunction is given, (4) the possibility for the other party who proposed to succeed in the proposed effort, (5) and the relation between the application of injunctions to the public interest.[33] These matters are important in relation to the essence of the preliminary injunction which aims to maintain the status quo and provide equal standing for the parties in legal proceedings which are primarily related to the public interest in determining rights and obligations in disputes. [34]

Singapore as a country with a common law legal system like the US has an injunction institution. Unlike the US, which is federal, the states have their own arrangements regarding injunctions in their respective legal systems, Singapore as a unitary state regulates injunctions that apply to all of Singapore. An application for an interim injunction in Singapore is filed following the procedures set out in the Rules of Court.

In Singapore's legal system, injunction institutions are organized thematically. There are various types of injections recognized and regulated in Singapore. Some injunctions are generally known and applied in almost all countries with a system or with the influence of the common law system, namely the Mareva Injunction and the Anton Piller Order. Apart from that, there are also specific injunctions with certain themes and laws, for example, injunctions in labor disputes or injunctions in family disputes in the form of Protection Orders, Exclusion Orders, and Maintenance Orders. These various forms of injunction make the scope of rights protection for the applicant party wide and can overcome different types of problems.[35]

In essence, the Mareva Injunction was requested to prevent the defendant from eliminating or covering up his assets before a decisive decision was made.[36] This injunction comes from the case of Mareva Compania Naveria SA v. International Bulkcarriers SA where a court in England granted the Injunction request to prevent the defendant from transferring his assets from the jurisdiction of the court. Unlike the Mareva Injunction, the Anton Piller Order stems from the Anton Piller KG v. Manufacturing Processing Ltd is a court order authorizing the applicant to search, enter the residence or position of the respondent, and confiscate the goods or documents referred to in the court order.[37] The Anton Piller Order is similar to a search and confiscation warrant but requires the consent of the respondent so it cannot be executed arbitrarily. Failure to comply with this order could result in the respondent being deemed to contempt and be held responsible for that action.

Other forms of injunction in Singapore's legal system are Protection Orders, Exclusion Orders, Maintenance Orders, and other forms of injunctions. A Protection Order is a court order to prevent or stop someone from disturbing or committing violence in the family or to prevent him from instigating or aiding others to commit such acts.[38] In line with the Protection Order, the Exclusion Order aims to order the respondent not to live and occupy the residence he shares with the applicant, for a certain time.[39] This is a form of increased protection for applicants compared to the Protection Order. While the Maintenance Order is a court order for someone to provide a living to the beneficiary who is entitled to the benefit, namely the party in the divorce dispute.[40]

The striking difference between civil procedural law in Indonesia and common law countries lies in the penalties that the plaintiff can ask for against the defendant (remedies). In Indonesian civil procedural law, the plaintiff can ask for anything in the petitum, from asking for compensation in the form of money to force the defendant to do something. Then, the judge examines the lawsuit and gives a decision that may grant compensation in the form of money and coercion to take an action. In contrast to the common law

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33 "Developments in the Law: Injunctions," *Harvard Law Review* 78, no. 5 (1965): 996, https://doi.org/10.2307/1338990.
34 Eugene J. Metzger and Michael E. Friedlander, "Preliminary Injunction: Injury without Remedy," *The Business Lawyer* 29, no. 3 (1973): 914.
35 Koh, *Law and Practice of Injunctions in Singapore*, 17.
36 *Ibid*., 83-87.
37 *Ibid*., 119-138.
38 *Ibid*., 276.
39 *Ibid*.
40 *Ibid*., 281.

system which separates compensation in the form of money from injunction as one of the equitable remedies. According to Anenson, compensation in the form of money is examined through a jury system and this jury will give a verdict, while equitable remedies are examined without the need for a jury to be involved.[41] This difference causes Indonesian legal experts to be unable to equate the concept of the injunction with several legal concepts in Indonesia. However, several legal concepts in Indonesia do have similarities both in terms of formal and material terms with injunctions. The legal concept in Indonesia has similarities with the injunction, namely provision, confiscation of guarantees, and provisional stipulations.

Provision is one of the additional claims besides confiscation. The additional claims is defined as a lawsuit that complements the main lawsuit so that the interests of the plaintiff are more secure.[42] The relationship between the additional claimand the main lawsuit is similar to the relationship between the main agreement and the additional agreement such as mortgages and mortgages. The principal agreement must exist before the additional agreement and the additional agreement cannot stand alone. Likewise, additional claims cannot stand alone without the existence of a main lawsuit, and additional claims as a complement cannot conflict with the main lawsuit. Provisional lawsuit arrangements are contained in Article 180 paragraph (1) of HIR. If we read at a glance, article 180 paragraph (1) of HIR only discusses immediate decisions (decisions that can be implemented beforehand even though there is still resistance). Provisions are indeed decided using provisional decisions that are immediate. However, this article cannot answer questions such as what the judge considers in giving a provisional decision when a provisional claim can be filed, what are the requirements for a provisional claim that the plaintiff needs to fulfill, and how the provisional decision is executed. Some of the answers to this question can actually be found in the *Reglement op de Rechtsvordering* (RV) and the doctrine of legal experts in Indonesia. According to Yahya Harahap, the formal requirement for filing a provision is that there is a basis for a request explaining the urgency and relevance of receiving a provisional claim, explaining clearly what interim measures must be decided, and may not be related to the subject matter of the case.[43] The provisional award is examined using a brief procedure under Article 283 of RV although it is possible to postpone the hearing under Article of 285 RV.[44] Based on Article 286 of RV, provisional decisions may not prejudice the main case or in other words, provisional claims may not touch the main case. If we compare it with the common law legal system, the concept of provision is formally similar to the preliminary injunction in Indonesia. Both of these concepts are pendente lite (postponing the course of the trial), are examined first, decided before the main case has permanent legal force, can be compared, and guarantees are provided. Guarantees for provisions and preliminary injunctions differ in terms of when the guarantees are submitted. Guarantees for provisions are given when provisional decisions will be executed, while guarantees for preliminary injunctions are one of the conditions for granting preliminary injunctions.[45]

The existence of provisions still raises several problems. The first problem relates to the timeframe for executing provisional decisions. Based on Article 180 HIR, provisional decisions are also classified as instant decisions so that their execution follows the mechanism of executing decisions immediately. Immediate execution of decisions refers to the Supreme Court Circular Letter (the SEMA) Number 3 of 2000 concerning Immediate Decisions (*Uitvoerbaar Bij Vooraad*) and Provisional ("SEMA 3/2000"). The execution was carried out by order of the Head of the High Court (the KPT) after receiving the files and opinions from the Head of the District Court (the KPN). This SEMA does not set a time limit for when the KPN must send the file to the KPT after the provisional decision is rendered and when the KPT must give permission to execute the decision immediately after receiving the file from the KPN. The absence of a definite time period has the potential to prolong the judicial process so that there is a possibility that the provision imposed will no longer be of any benefit to the plaintiff. In addition, the flow of execution of decisions is lengthy, execution can be carried out quickly through KPN without the need to wait for KPT permission. As previously explained, provisions are given because there is urgency and relevance so that the flow of execution of provisional decisions must be

41 Anenson, "The Triumph of Equity," 411.

42 M. Yahya Harahap, *Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2017), 71.

43 *Ibid*.

44 *Ibid*.

45 *vide* Rule 65(c) FRCP.

carried out as quickly as possible. The second problem relates to the execution of decisions in Indonesia which are still voluntary without coercion. Even though the provisional claim that was granted shows that there is an urgent interest so that the plaintiff's rights can be guaranteed, the voluntary execution of the provisional decision does not guarantee the defendant's compliance with the execution of the provisional decision. The third problem is related to interpretation constraints and the valid strength of the RV. RV uses Dutch which is structurally and linguistically has significantly different from Indonesian. This is exacerbated by the standard Indonesian language which continues to change from time to time. Differences in interpreting one language to another can confuse future jurists. The strength of the RV force is also questionable. In Emergency Law 1/1950, the RV has been declared no longer valid, but according to Yahya Harahap, the RV is still valid on the principle of *process doelmatigheid* (for the sake of proceedings). Yahya Harahap also argued that the Supreme Court (MA) used the RV to refer to several legal concepts such as revocation of lawsuits, interventions, and others. How can a law have been declared null and void by a future law but based on the internal regulations of a court and the doctrine of a prominent jurist a law remains in effect. This is difficult to understand from the perspective of constitutional law, which recognizes regulatory hierarchies. The fourth problem is regarding the provision of guarantees at the time of execution of provisional decisions. The obligation to provide guarantees as a condition for executing decisions has the potential to prolong the judicial process. Provision lawsuits that have been received but the plaintiffs do not have enough money to be used as collateral causes the lawsuit to be unable to be carried out. Even though the plaintiff had gone through several series of events until finally the provisional lawsuit was granted, however, due to limited funds, the provisional lawsuit could not be carried out. The last problem is that there is no judge's reference for providing provisions so that no party feels disadvantaged by granting provisions to the plaintiff. SEMA Number 3 of 2000 and SEMA Number 4 of 2001 only provide two types of references to judges when considering granting provisions, namely looking at the type of lawsuit and providing guarantees. One example of a case can be seen in the Supreme Court Decision Number 1738 K/Sip/1977 dated 5 June 1978. The Supreme Court agreed with the provision by the High Court only based on the memory of the appeal, even though the Supreme Court did not approve all of the High Court's decisions regarding provisions in this case.[46] However, the High Court and the Supreme Court did not provide strong arguments regarding the reasons for granting the provision and the possibility that this provision would be detrimental to the defendant. The injunction can correct this weakness by balancing the position of the litigants so that neither party feels disadvantaged.

Confiscation as a provision is the second type of additional claims. The confiscation froze the defendant's goods stored (*diconserveer*) so that they cannot be transferred.[47] HIR regulates two types of confiscation, namely revindication confiscation and collateral confiscation. Revindication confiscation is regulated through Article 226 of HIR. The purpose of having a revindication confiscation is so that the owner of the movable property whose goods are in the hands of another person can be returned.[48] In addition to revindication confiscations, there are also collateral confiscations regulated by Article 227 jo. Article 197 of HIR. The purpose of confiscation of collateral is that the claim is not empty (*illusoir*). Collateral confiscation places the defendant's property in a confiscation condition. A confiscation condition means that the item cannot be transferred or sold. If the principal lawsuit has been accepted, the confiscated goods will be sold to fulfill the plaintiff's rights. The difference between a collateral confiscation and a revindication confiscation can be seen from 3 things, namely the purpose, the object of the confiscation, and the goods confiscated. The purpose of revindication confiscation is to return the plaintiff's property to the hands of another person, while collateral confiscation aims to place the defendant's property in a state of confiscation so that the defendant cannot secretly transfer his property so that the plaintiff does not receive payment. The object of confiscation of revindication is the plaintiff's property, while the object of confiscation of collateral is the property of the defendant. Goods that can be subject to revindication confiscation are only movable property while collateral confiscation can be imposed for movable and immovable property. The concept of confiscation, in this case, the confiscation of collateral, is similar to the Mareva Injunction in Singapore law, which is related to its purpose. The two legal concepts above aim to

46 Putusan Mahkamah Agung Nomor 1738 K/Sip/1977 perihal Kasasi Ny. Ng. Djenalmashur, Ny. Painah, Lim Liang Ting, dan Pek Sek Hun (Mahkamah Agung June 5, 1978).

47 Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Edisi Revisi (Yogyakarta: Cahya Atma Pustaka, 2013), 96.

48 *Ibid*.

freeze the defendant's assets because there is a possibility that the defendant will transfer his assets before the final decision is rendered.

Provisional Determination is regulated through SEMA Number 5 of 2012 concerning Provisional Determinations ("SEMA 5/2012") and laws relating to Intellectual Property Rights (IPR). Article 1 number 1 SEMA 5/2012 provides a definition related to interim injunctions, namely court decisions relating to violations of rights to industrial designs, brands, patents, and copyrights to prevent the entry of goods suspected of violating IPR into trade routes, preventing and securing the removal of evidence by parties who violate other people's IPR, as well as stop the violation to prevent further losses. This SEMA also regulates the procedural law of the interim determination starting from the filing of the application until the issuance of the provisional determination. The application is submitted in accordance with the interests of the applicant, whether the applicant wants to prevent further violations or secure evidence accompanied by the initial evidence of an IPR violation and security deposit.[49] If the application complies with the provisions of the SEMA, the inspection will be carried out *ex parte*.[50] After hearing the statement of the applicant and considering all the evidence presented, the judge may grant or reject the provisional decision.[51] The provisional determination that is granted will be carried out by the bailiff. After it is carried out, the respondent (the party based on the initial evidence of the applicant has committed an IPR violation) is notified within 1x24 hours to be heard.[52] The respondent will explain the arguments and evidence and the judge will consider whether the provisional decision is strengthened or canceled using new facts.[53] The provisional determination will be strengthened and the security deposit will be handed over to the applicant if the applicant can prove that the respondent has indeed violated IPR even though he has been granted the right to make an application.[54] If the provisional decision is strengthened, the applicant must file a lawsuit with the court.[55] It should be noted that the provisional determination is final and binding. The provisional determination will be canceled and the security deposit will be handed over to the respondent if the applicant fails to prove an IPR violation by the respondent. The definition and procedural law are in line with the provisions in the IPR law. The essence of the provisional decision is twofold, namely preventing further losses due to violations of IPR and securing evidence from the hands of the defendant so that it is not lost. The provisional determination bears some resemblance to Anton Piller in Singapore law. The similarity is because what the applicant asked for in the provisional decision or Anton Piller is the same, namely securing evidence from the opposing party. The main difference is that the applicant, apart from asking to secure evidence, can also ask to confiscate the opponent's goods to prevent greater losses. In addition, the provisional determination is examined initially ex parte. After the defendant's property has been confiscated to be used as evidence, the respondent is given the right to argue in court and if the objection is accepted, the judge orders the applicant to hand over the confiscated evidence along with collateral. Anton Piller himself is completely ex parte, so the judge must be careful when awarding Anton Piller. In addition, the provisional determination also has similarities with the TRO concept in the US. TRO can be given through an ex parte examination, while the provisional determination is initially given through an ex parte inspection, and TRO and provisional determination cannot be compared.

Provisional determination is rarely used in practice. One of the reasons is the long process of the event. The procedural process for the provisional determination is divided into two phases, namely the voluntary phase (examination without involving the opposing party) and the contradictory phase (examination involving two disputing parties). In this contradictory phase, the applicant must listen to the arguments of the respondent accompanied by evidence as in a general examination. This process takes a long time with two inspection phases. Even though one of the reasons for the existence of a provisional determination is to prevent greater losses if the provisional determination is not immediately imposed, the lengthy provisional determination process will eliminate the essence of the provisional determination itself. In addition, SEMA 5/2012 also does

49 *vide* Article 2 SEMA 5/2012.
50 *vide* Article 5 SEMA 5/2012.
51 *vide* Article 6 jo. Article 7 SEMA 5/2012.
52 *vide* Article 9 SEMA 5/2012.
53 *vide* Article 10 SEMA 5/2012.
54 *vide* Article 12 SEMA 5/2012.
55 *vide* Article 13 SEMA 5/2012.

not provide a time limit for how long the provisional decision must be terminated after the court has received the request. There is no certainty for the applicant when the provisional decision can be imposed in a final and binding manner.

3.2. Legal Principles in Injunction

According to Peter Mahmud Marzuki, legal principles are the basic ideas for decision-making by the legislature, executive, and judiciary in accordance with their respective duties and functions.[56] In determining whether to give an injunction, judges in the US refer to the American Cyanamid Principle. The American Cyanamid Principle is a number of conditions that need to be explained by the plaintiff about why the judge needs to give an injunction to the plaintiff. The American Cyanamid Principles consist of 4 principles, namely:

a. The possibility of injustice (risk of doing injustice) is the principle of injunction which states that the court must make decisions that reduce the possibility of injustice.[57] The injustice arises because the position of the litigants is different. For example, cases between individuals and companies are certainly not balanced because companies have access to funds and broader relationships than individuals. The court must be able to maintain a balance of positions between the litigants. The balance of the positions of the parties must be maintained by the court until the substance of the lawsuit can be discussed and decided.

b. Serious questions to be tried require the plaintiff to have a cause of action before the court gives an injunction.[58] Cause of action is a factual condition that allows one of the parties to obtain compensation. Indonesian law recognizes a cause of action as the basis of fact (*feitelijke ground*) in a lawsuit.[59] The essence of injunction is protection for the plaintiff due to a violation of his rights and cannot be replaced in full when the case has been examined.[60] The cause of action explained by the plaintiff to obtain an injunction must contain the rights that have been violated and cannot be replaced in full.

c. Inadequacy of damages means that the court must consider whether the losses suffered by the plaintiff can be fully compensated by the defendant.[61]

d. Balance of convenience is a judge's analysis to determine the balance of position of the litigants. Based on the American Cyanamid Case, there are 8 things that can be used as a reference for giving an injunction, namely insufficiency of compensation, impact on third parties, public interest, status quo, the power of each party to the litigation, the actions of the parties, there should be no delay, and the amount of guarantee.[62]

These four principles need to be considered in the formulation of injunctions into the Civil Procedure Bill. These four principles serve as a counterbalance so that the injunction given does not harm the defendant's rights but also helps the plaintiff in fulfilling his rights.

3.3. Application of the Injunction of US and Singapore Laws into the Indonesian Civil Procedure Bill

As in the previous discussion, a concept similar to the injunction which functions as an institution to fulfill and protect rights already exists in the civil justice system in Indonesia. However, the concept is spread through legal institutions regulated in several regulations. In addition, these institutions are regulated in the regulations inherited from the Dutch colonial government which was written in Dutch. The difference between the Dutch language family and the Indonesian language itself has the potential to cause differences

56 Peter Mahmud Marzuki, *Teori Hukum* (Jakarta: KENCANA, 2020), 47.
57 Adrian Wong, *Interlocutory Injunctions*, Second Edition (Utopia Press Pte Ltd, 2010), 7.
58 *Ibid*.
59 Cornell Law, "Cause of Action," LII / Legal Information Institute, accessed February 23, 2023, https://www.law.cornell.edu/wex/cause_of_action.
60 P.J. Cornell and M.N. Sturzenegger, "Interlocutory Injunctions: A Serious Question To Be Tried?" 8, no. 1 (1977): 208.
61 Wong, *Interlocutory Injunctions*, 9.
62 *Ibid*., 12

in the meaning and intent of the regulations when translating the regulations into Indonesian because there is no appropriate equivalent word in Indonesian. Until now there has been no official translation from the Government of the inheritance law of the Dutch colonial government. These things have the potential to cause differences in interpretation to differences in the application of the law. The drafting of the Indonesian Civil Procedure Bill seeks to answer these problems.

Based on the Indonesian Civil Procedure Bill, some of the arrangements for legal institutions similar to injunctions themselves have been regulated in a concrete and limited manner, while others have only been implicitly alluded to. These institutions include confiscation of guarantees and provisions. However, as in the previous discussion, the two institutions are not effective as a provisional measure to fulfill and protect the rights of the parties because it is difficult to grant and there is a tendency not to grant demands for the use of these two institutions considering their very exceptional nature.[63] The hanging of the parties' rights on these institutions makes it increasingly difficult for justice seekers to obtain effective and just dispute resolution. These institutions have also not been able to deal with other concrete problems related to fulfilling and protecting rights such as efforts to eliminate evidence, construction on disputed land, and factory activities that pollute the environment, which in their nature require immediate intervention because it will cause harm if awaiting settlement through conventional means. This shows that efforts to unify the rules of civil procedural law are not matched by strengthening the substance to deal with the dynamic traffic of civil disputes on the pretext that it is not possible to make an entirely new law.[64]

Indonesia can follow the example of other countries in dealing with the dynamic development of civil dispute traffic. In the US federal legal system, referring to the FRCP, there are two forms of provisional measures (provisional measures that can be taken by the applicant against the respondent) based on the authority of the court, before an examination of the main case is carried out. At injunction, the request must be known by the respondent and the possibility is opened to combine a brief examination of the application for injunction with the examination of the main case.[65] Whereas in the Temporary Restraining Order (TRO), inspections can be carried out *ex parte*. TRO is given for a certain time. If TRO is given without notification, it must be immediately followed up with a preliminary injunction.[66]

As previously discussed, injunctions and TROs in the US federal legal system have advantages when compared to provisional institutions in Indonesia. For injunction and TRO, there are no known legal remedies against orders given by courts in general. However, under special conditions, legal remedies against injunction or TRO, as an interlocutory appeal, can be made subject to strict requirements (collateral order doctrine).[67] It can be concluded that an interlocutory order such as an injunction or TRO can be implemented immediately or it is possible to become an order that is instantaneous, considering the nature of the decision to immediately have an impact on the object of the order and the parties.[68] Another thing that makes an injunction or TRO effective as a provisional measure is the threat of sanctions for non-compliance or neglect of orders issued by the court. Disobedience or neglect of the party ordered based on a court order can be threatened because it has done contempt of court and has implications for both criminal and civil liability for the said act.[69]

Based on the arrangement of injunction as provisional measures by the two countries, namely the US and Singapore, we can derive some of the characteristics of an injunction. The characteristics of a provisional measure are attached to injunctions so that the authors can compare the advantages and disadvantages of injunction from the point of view of the injunction applicant, but it needs to be understood that the disadvantages possessed by injunctions are advantages for the respondent in an injunction application because of the invasive

63 M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Perdata* (Jakarta: Sinar Grafika, 2005), 258–60.

64 Admin, "RUU Hukum Acara Perdata dan Arah Reformasi Eksekusi Perdata," pshk.or.id (blog), December 15, 2021, https://pshk.or.id/aktivitas/seri-diskusi-fkp-ruu-hukum-acara-perdata-dan-arah-reformasi-eksekusi-perdata/.

65 *vide* Rule 65(a) FRCP.

66 *Vide* Rule 65(b) FRCP.

67 Michael E. Solimine, "The Renaissance of Permissive Interlocutory Appeals and the Demise of the Collateral Order Doctrine," *Akron L. Rev*. 53 (2019): 608.

68 Michael T. Morley, "Nationwide Injunctions, Rule 23 (b)(2), and the Remedial Powers of the Lower Courts," *BUL Rev*. 97 (2017): 644.

69 Amanda Frost, "In Defense of Nationwide Injunctions," *NYUL Rev*. 93 (2018): 1071.

nature of injunctions, it must be balanced with limited application requirements to maintain the balance of the interests of both parties.[70] Some of the characteristics of injunction, among others:

Table 2. Advantages and Disadvantages of Injunction

Advantages	Disadvantages
A short or simple examination	Temporary or transient
Given for interest that is urgent and difficult to be recovered	Given for interest that is urgent and difficult to be recovered
Execution of the order is immediate	Given with consideration of the interests of the parties (including the obligation to provide guarantees for the applicant)
Threats of sanctions for violation or neglect of orders	Invasive in nature against the rights of others
Continuity between the application and the main case	The opposite decision is potentially given by the final verdict

Source:https://heinonline.org/HOL/LandingPage?handle=hein.journals/hastlj59&div=11&id=&page=, 4th of March 2023

There are several obstacles that occur in the application of injunctions both in the US and in Singapore. The obstacle for judges in applying for an injunction in the US is when they are faced with the issue of the authority of federal judges to give nationwide injunctions against the federal government for the application of government policies to all people, not just to the applicant (raising the terms nationwide injunction or universal injunction). Article 65 FRCP authorizes the court to impose an injunction, but does not expressly authorize a nationwide injunction. This has attracted the attention of many parties, including discussions regarding the revision of the FRCP to accommodate the nationwide injunction.[71] Another obstacle that occurs in the application of injunctions is regarding the implementation of injunctions, as in the case of Maldives Airports Co Ltd and another v. GMR Malé International Airport Pte Ltd in Singapore, especially when it comes to the interests of third parties.[72] Of course, the involvement of a third party as a party related to the injunction is a separate issue considering that the injunction itself is *in personam*.[73] These obstacles need to be a concern for policymakers in formulating the scope of the injunction model to be adopted in Indonesia through the Indonesian Civil Procedure Bill.

The concept of injunction can be adopted to become one of the mechanisms for fulfilling and protecting rights in Indonesia. However, in adopting a law from a different legal system, it needs to be done carefully. The adoption of injunctions cannot be carried out immediately by changing foreign regulations to Indonesian and including them in the Indonesian Civil Procedure Bill. In adopting law after making comparisons, it is necessary to understand the legal system that is to be adopted as a whole, especially understanding conceptual differences between languages.[74] In addition, it is also important to understand the purpose and social context of the legal rules of the country of origin of the legal rules. Only by understanding the purpose and social context of law can we understand the function and role of law in that society.[75]

The Indonesian Civil Procedure Bill actually has provided a basis or concept of an institution similar to the injunction, namely in Article 84 paragraph (1) of the Indonesian Civil Procedure Bill. Such a regulation

70 Tracy A. Thomas, "Proportionality and the Supreme Court's Jurisprudence of Remedies," *Hastings Law Journal* 59, no. 1 (2008): 97–98.

71 Joanna R. Lampe, "Nationwide Injunctions: Law, History, and Proposals for Reform" (Congressional Research Service, September 2021), 36.

72 Mahdev Mohan, "A Vanishing Silhouette: Acts of State Doctrine(s) and Interim Relief In Singapore," *Journal of East Asia and International Law* 9, no. 1 (2016): 235.

73 Koh, *Law and Practice of Injunctions in Singapore*, 5.

74 Peter de Cruz, *Perbandingan Sistem Hukum* (Bandung: Nusa Media, 2010), 306.

75 Michael Bogdan, *Pengantar Perbandingan Sistem Hukum* (Bandung: Nusa Media, 2010), 56.

is not sufficient to become an effective rights fulfillment and protection institution because it does not yet regulate the procedures for filing applications, guarantees, and threats of sanctions for ignoring court orders as stipulated in US and Singapore law.

Injunction needs to be regulated in the Indonesian Civil Procedure Bill specifically as an effort to fulfill and protect the rights of the parties in the form of an application. This is based on the characteristics of injunction as a mechanism for fulfilling and protecting rights through court orders to do or not do something, including granting the authority to confiscate goods to the party being requested based on brief evidence to prevent irrecoverable losses. Irreparable harm is the most important requirement, *sine qua non*, in injunction administration.[76] Even though it is temporary, the injunction has the potential to injure the rights of the party being requested for the injunction, so the applicant must be able to prove that the losses that will be incurred are greater than if the injunction is not given. Irreparable harm reflects urgency because the more delayed intervention through a court order, the greater the potential for irreparable harm. Therefore, urgency is one of the important reasons underlying giving an injunction. Apart from urgency, another condition that must be met to obtain an injunction is the existence of a balance of interests that is maintained by the court.

To maintain the balance of the parties, the application for an injunction must be accompanied by the imposition of a guarantee deposited with the court, if deemed necessary by the court. The amount of bail is determined by the court according to the value deemed appropriate. In assessing the size of the figure that can be called appropriate, the court can calculate an estimate of the actual losses suffered by the respondent in fulfilling the court order. This guarantee serves as compensation for losses suffered by the respondent if the applicant fails to prove that his application for injunction deserves to be granted.[77]

Guarantees in the injunction institution also function to filter requests for an injunction so that they are not used arbitrarily by parties who use injunctions as a tool to legally coerce other parties. The submission of collateral must be carried out by the applicant at the beginning of the application and is a condition for granting an injunction. Such regulation will change the rule of law that has been in effect so far, namely that there is no immediate implementation of decisions without guarantees based on SEMA 4 of 2001 concerning Issues with Immediate Decisions (*Uitvoerbaar Bij Voorraad*) and Provisional Determination. With the rules stipulated in the SEMA, it can create conditions for an immediate decision without implementation, in the event that the plaintiff is unable to pay bail. This is ineffective, there are decisions that are instantaneous, and have gone through an examination process that consumes time and money, but decisions that seem declaratory (as a result cannot be implemented). With the new legal rules, if the conditions for submitting collateral cannot be met by the applicant, the application for an injunction must be rejected because it does not meet the requirements.

In the event that an application for an injunction is granted, the applicant is obliged to continue the lawsuit against the respondent regarding the principal dispute between the two. This is to maintain continuity because injunctions are given temporarily and to prevent misuse of injunctions as a tool to legally coerce other parties. It must be ensured that there is continuity between the application for an injunction and the lawsuit on a principal case related to protecting the rights of the applicant and safeguarding the rights of the respondent injunction. For this reason, it is necessary to regulate the time limit for each stage of an injunction application, starting from the submission of the application, and examination, to the issuance of the stipulation. The time limit for the application is to ensure that the injunction institution remains effective in protecting rights, especially the applicant's rights.

The stipulation containing a court order for an injunction request must be obeyed by both parties and the third party concerned. This is to support the implementation of the injunction immediately. Violation of these obligations is punishable by criminal sanctions to provide a deterrent effect and ensure that the implementation of the stipulation as an effort to protect the rights of the parties can be carried out immediately. Sanctions are required specifically only for the determination of the application for an injunction because the implementation of the determination/decision in the current civil procedural law regime is still voluntary and cannot be imposed unilaterally by the winning party even though the party already has rights based on a court decision that has

76 "Preliminary Injunctive Relief in Patent Cases: Repairing Irreparable Harm," *University of Utah College of Law Research Paper* 520 (2022): 69, http://dx.doi.org/10.2139/ssrn.4205317.

77 Harahap, *Ruang Lingkup Permasalahan Eksekusi Perdata*, 201.

permanent legal force. In addition to providing threats of sanctions to increase compliance, the determination of the application for an injunction must also be final and binding so that no legal remedies are opened for the determination. It is also sufficient to carry out the determination of the application for injunction with the intervention of the district court where the applicant applied. This is to avoid inefficiencies in the form of high court interference in granting permission for decisions immediately issued by lower courts. The Supreme Court's doubts about the accuracy and ability of the district court to give decisions immediately are no longer relevant and must be abandoned with the existence of a mechanism for protecting rights that can be carried out immediately while maintaining the interests of the parties by regulating the injunction institution in the Indonesian Civil Procedure Bill.

In Indonesian civil procedural law, there is a concept called efforts to guarantee rights. Efforts to guarantee rights are a certainty that the plaintiff's rights can be exercised because there is a possibility that the defendant during the examination transfers his assets.[78] Efforts to guarantee current rights are only in the form of confiscation, provision, and temporary determination. With all the current shortcomings in efforts to guarantee rights in Indonesia, the injunction can guarantee the plaintiff's rights that have been decided by the court.

If it is regulated in the Indonesian Civil Procedure Bill, the injunction will be regulated in Chapter VI concerning Efforts to Guarantee Rights. The injunction arrangement in Chapter VI which is side by side with the arrangement regarding collateral confiscation will expand the intent of the rights in that chapter, that is, in addition to guaranteeing the fulfillment of the right to compensation, there are also efforts to protect the rights of the parties to obtain all the resources they can access to prove their argument with evidence. based on legally controlled evidence.

Through centralized injunction institutional arrangements, it is hoped that this will ensure the existence of a mechanism to protect the rights of the parties and prevent problems from arising, especially execution issues that have so far been an obstacle in efforts to fulfill rights.

4. CONCLUSION

Common law countries only set general rules relating to injunctions. Specifics such as standards for injunctions and what actions can be taken in court develop through precedents in each court. The US itself regulates the concept of the injunction through the FRCP. The FRCP is considered so general that further understanding requires precedent. One of the cases that helped the development of injunction in the US, for example, Winter v. Natural Resources Defense Council in 2008 that discussed the balance of interests in the preliminary injunction. As previously explained, Singapore regulates injunctions thematically and is spread across various special regulations. An example of a case that helped develop an injunction in Singapore is Anton Piller KG v. Manufacturing Processes Ltd, which sparked the concept of the Anton Piller Order as the basis for the right to search and search for evidence at the defendant's premises.

Indonesia itself has several legal concepts that are similar to injunctions in common law countries. Provisions can be compared with preliminary injunctions because they are pendent lite in nature and there is a guarantee to balance the plaintiff's rights and the defendant's rights. Confiscation is similar to the concept of Mareva Injunction in Singapore law because it has the same goal, which is to freeze the defendant's assets so that the defendant cannot transfer his assets. The provisional determination is similar to the TRO regarding incommensurability and examinations that can be carried out ex parte. The legal concept above is not enough to guarantee the fulfillment and protection of rights. Injunctions must be made into the Indonesian Civil Procedure Bill as a mechanism for justice seekers to strive for the fulfillment and protection of their rights. The characteristics of injunction as provisional measures from US and Singapore law are good to be studied and adopted comprehensively and contextually. Advantages such as short or simple examinations, instant execution, and threats of sanctions for violations are examples of essential characteristics to ensure injunction as an effective provisional measure in the future.

In adopting the injunction institution, it is important not only to translate the language of concrete regulations into Indonesian, but also to understand the purpose and social context of the regulation and to

78 Mertokusumo, *Hukum Acara Perdata Indonesia*, 95.

harmonize with other relevant national legal principles so that injunctions can become effective legal institutions. The American Cyanamid Principle is also important to consider in formulating an injunction in the Indonesian Civil Procedure Bill.

As a prescriptive science, legal research needs to include prescriptions or what should be done in dealing with a legal issue. The legal issue raised by the authors is a legal comparison regarding efforts to guarantee civil rights between Indonesia and common law countries, in this case, the US and Singapore. Efforts to guarantee rights based on Indonesian law, namely provision, temporary determination, and confiscation. Meanwhile, in comparison, the authors only use injunction as an effort to guarantee rights from common law countries.

BIBLIOGRAPHY

Admin. "RUU Hukum Acara Perdata dan Arah Reformasi Eksekusi Perdata." *pshk.or.id* (blog), December 15, 2021. https://pshk.or.id/aktivitas/seri-diskusi-fkp-ruu-hukum-acara-perdata-dan-arah-reformasi-eksekusi-perdata/.

Anenson, T. Leigh. "The Triumph of Equity: Equitable Estoppel in Modern Litigation." *Rev. Litig.* 27 (2007): 377.

Aruan, Ukkap Marolop. "Tata Cara Penyitaan Barang Bukti Tindak Pidana Menurut Kuhap." *Lex Crimen* 3, no. 2 (2014).

Bogdan, Michael. *Pengantar Perbandingan Sistem Hukum*. Bandung: Nusa Media, 2010.

Bray, Samuel L. "The System of Equitable Remedies." *UCLA Law Review* 63 (2016): 530.

Cornell Law. "Cause of Action." LII / Legal Information Institute. Accessed February 23, 2023. https://www.law.cornell.edu/wex/cause_of_action.

Cornell, P.J., and M.N. Sturzenegger. "Interlocutory Injunctions: A Serious Question To Be Tried?" 8, no. 1 (1977).

Cruz, Peter de. *Perbandingan Sistem Hukum*. Bandung: Nusa Media, 2010.

Denlow, Morton. "The Motion for a Preliminary Injunction: Time for a Uniform Federal Standard." *Rev. Litig.* 22 (2003): 495.

"Developments in the Law: Injunctions." *Harvard Law Review* 78, no. 5 (1965): 994–1093. https://doi.org/10.2307/1338990.

Farnsworth, E. Allan. "Legal Remedies for Breach of Contract." *Columbia Law Review* 70, no. 7 (1970): 1145–1216.

Frost, Amanda. "In Defense of Nationwide Injunctions." *NYUL Rev.* 93 (2018): 1065.

Garner, Bryan A. *Black's Law Dictionary*. Seventh Edition. Minnesota: St. Paul, 1999.

Greenberg, Daniel. *Stroud's Judicial Dictionary of Words and Phrases*. London: Sweet & Maxwell Ltd, 2008.

Harahap, M. Yahya. *Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*. Jakarta: Sinar Grafika, 2017.

———. *Ruang Lingkup Permasalahan Eksekusi Perdata*. Jakarta: Sinar Grafika, 2005.

Khairandy, Ridwan. *Pokok-Pokok Hukum Dagang Indonesia*. Yogyakarta: FH UII Press, 2017.

Koh, Daniel. *Law and Practice of Injunctions in Singapore*. Singapore: Sweet & Maxwell Asia, 2004.

Kull, Andrew. "Rescission and Restitution." *The Business Lawyer* 61, no. 2 (2006): 569–88.

Lampe, Joanna R. "Nationwide Injunctions: Law, History, and Proposals for Reform." Congressional Research Service, September 2021.

Marzuki, Peter Mahmud. *Penelitian Hukum*. Revisi. Jakarta: KENCANA, 2017.

———. *Teori Hukum*. Jakarta: KENCANA, 2020.

Mertokusumo, Sudikno. *Hukum Acara Perdata Indonesia*. Edisi Revisi. Yogyakarta: Cahya Atma Pustaka, 2013.

Metzger, Eugene J., and Michael E. Friedlander. "Preliminary Injunction: Injury without Remedy." *The Business Lawyer* 29, no. 3 (1973): 913.

Mohan, Mahdev. "A Vanishing Silhouette: Acts of State Doctrine(s) and Interim Relief In Singapore." *Journal of East Asia and International Law* 9, no. 1 (2016).

Morley, Michael T. "Nationwide Injunctions, Rule 23 (b)(2), and the Remedial Powers of the Lower Courts." *BUL Rev.* 97 (2017): 615.

Paton, George Whitecross. *A Textbook of Jurisprudence*. Oxford: Clarendon Press, 1972.

"Preliminary Injunctive Relief in Patent Cases: Repairing Irreparable Harm." *University of Utah College of Law Research Paper* 520 (2022). http://dx.doi.org/10.2139/ssrn.4205317.

Putusan Mahkamah Agung Nomor 1738 K/Sip/1977 perihal Kasasi Ny. Ng. Djenalmashur, Ny. Painah, Lim Liang Ting, dan Pek Sek Hun (Mahkamah Agung June 5, 1978).

Ramadhan, Ardito. "Baleg DPR Tetapkan 40 RUU Prolegnas Prioritas 2022, Ini Daftarnya." KOMPAS.com, December 6, 2021. https://nasional.kompas.com/read/2021/12/06/21173181/baleg-dpr-tetapkan-40-ruu-prolegnas-prioritas-2022-ini-daftarnya.

Rendleman, Doug. "The Inadequate Remedy at Law Prerequisite for an Injunction." *U. Fla. L. Rev.* 33 (1980): 346.

Situmorang, Mosgan. *Laporan Penelitian Hukum Tentang Penyederhaan Proses Peradilan*. Jakarta: Pusat Penelitian dan Pengembangan Hukum Nasional, 2009.

Solimine, Michael E. "The Renaissance of Permissive Interlocutory Appeals and the Demise of the Collateral Order Doctrine." *Akron L. Rev.* 53 (2019): 607.

Sugitha, Made Yoga Pramana, and I Nyoman Suyatna. "Tinjauan Terhadap Eksekusi Putusan Yang Menghukum Orang Untuk Melaksanakan Suatu Perbuatan." *Kertha Wicara* 9, no. 1 (2019).

Thomas, Tracy A. "Proportionality and the Supreme Court's Jurisprudence of Remedies." *Hastings Law Journal* 59, no. 1 (2008).

Ulen, Thomas S. "The Efficiency of Specific Performance: Toward a Unified Theory of Contract Remedies." *Michigan Law Review* 83, no. 2 (1984): 341–403.

Wong, Adrian. *Interlocutory Injunctions*. Second Edition. Utopia Press Pte Ltd, 2010.

Wright, Charles Alan. "The Law of Remedies as a Social Institution." *University of Detroit Law Journal* 18, no. 4 (1955): 376.