PARADIGM OF APPLICATION OF THE NO WORK NO PAY PRINCIPLE IN DETERMINING PROCESS WAGES

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ABSTRACT
The principle of no work no pay is a legal principle in labor law whose content shows the relationship between wages and work in an employment relationship. That means workers will not get paid if they do not work. The legal principle is frequently applied by courts in determining wages for workers whose employment relationship have been terminated so that workers lose their rights to process wages. With a non-doctrinal study that uses court decisions, this research examines the legal considerations of the panel of judges in applying the principle of no work no pay when determining whether to give wages to workers whose employment relationship has been terminated. The study showed that the paradigm of applying the no work no pay principle is still focused on the positivist mindset, which is deeply rooted in court as well as in the process of legal reasoning by the panel of judges. So that workers who do not work are considered as a single legal fact without other legal facts that accompany it.

Keywords: judiciary; termination of employment; process wages

1. INTRODUCTION
Work and wages are two essential things in a legal relationship in the form of an employment relationship between workers and employers, making the employment relationship have elements of wages, orders, and work. Even wages and work can be said to be the core of the bargaining process between worker and employer.1 In the construction of labor law, a work relationship is created through the existence of a work agreement between worker and employer, in which wages and work are placed as achievements of each party. The employer on the one hand is obliged to provide work and is entitled to work deliverable from workers. While on the other hand, the worker is obliged to work and entitled to rewards for achievement in the form of wages. The connection and attachment between work and wages are clearly illustrated through the provisions in the labor law regulations. As stipulated in Article 40 paragraph (1) of Government Regulation Number 36 of 2021 concerning Wages which stipulates that the wages that are the entitlement of the worker will not be paid if the worker does not do his work either because the worker does not come to work and/or do not do the work as agreed to in the work agreement.

The legal provisions above are a concrete form of the “no work no pay” principle which previously manifested in Article 1602b of Burgerlijk Wetboek (Indonesian Civil Code). The principle of no work no pay in its development has become a principle of labor law which is often used in determining wages for workers whose employment relationship are in the process of being terminated. The labor wages referred to are commonly known as process wages. No work no pay in practice is commonly found when disputes over termination of employment relationship are already at the cassation level in the highest court. Process wages that had previously been given to workers through a court decision of the first instance were declared null and void. The court based the cancellation of process wages by applying the principle of ‘no wages without work’ as justified in Indonesian labor law.

If the court with its adjudication process is interpreted as a battlefield for ideological battle,\(^2\) then the output produced by the court is the output that comes from the ideological battle that has taken place before.\(^3\) This has a logical consequence that court decisions born from a battle in the ideological field make the decision ideologically constructed, as well as the contents therein. The ideological battle in question could have been contained in the choice of the panel of judges to enact legal regulations concerning no work no pay, rather than implementing legal regulations which strictly limit the implementation of no work no pay, which actually also gains juridical legitimacy in Indonesian labor law. Likewise with the choice of the panel of judges at the cassation level in canceling the payment of process wages for workers even though process wages had been given to workers at the industrial relations court of first instance.

The foregoing description was missed in the study of the principle of no work no pay in Indonesia. Many studies focus on the application of the no work no pay principle to various legal events. As Ramsay\(^4\) examines the application of no work no pay in legal events in the form of strikes by workers. Also the study conducted by Dharmawan\(^5\) and Irfan et.al\(^6\) conducting an assessment of Covid-19 as a legal event that became the basis for the legitimacy of the application of no work no pay, or the application of the principle of no work no pay in determining process wages as carried out by Gunadi\(^7\). Such a normative study has the potential to obscure the fact that the application of an abstract legal principle, especially in an adjudication process, is not free from various hidden elements. Especially when looking at it holistically, for example in the implementation of no work no pay in the case of workers going on strike. When the juridical construction of the strike failed and it was difficult for workers to carry out a legal strike,\(^8\) then an assessment that focused on the internal logic of the law will also legitimize and perpetuate the weakening of workers.

The situation above showed that there is a void in the discourse on a critical review of the principle of no work no pay. One of the critical studies in question is related to the paradigm of the principle of no work no pay. A Paradigm is interpreted as a basic perspective or as a basis for thinking in creating one’s interpretive understanding both individually and collectively.\(^9\) So the void discourse in question is the void discourse on basic perspectives or patterns of thinking from the no work no pay principle applied by the panel of judges when determining the awarding of process wages for workers who have experienced termination of employment. Which is the subject of discussion in this article.

To the awareness of the void in discourse referred to and also to previous studies that were focused on the level of abstraction, this article will contribute to the void in the discourse regarding the paradigm of applying the principle of no work no pay in determining process wages. Furthermore, instead of dwelling on the level of abstraction, this study examines concrete events, namely the application of the no work no pay principle in court in determining process wages for workers whose employment relationship have been terminated. Therefore, this article shows an interpretation of the no work no pay principle by examining court decisions which is a form of concrete embodiment of a general legal norm.

The background above gave rise to a problem which is formulated as follows: what is the paradigm of applying the principle of no work no pay by judges in determining process wages for workers whose

employment relationship have been terminated? Therefore, this article rests on a temporary suspicion that there is a paradigm behind the court decision which eliminates process wages for workers.

This article begins with presenting conceptual ideas regarding courts as a medium for workers to achieve the fulfillment of their rights. The discussion then proceeded to the application of the no work no pay principle by the court when determining process wages for workers who have been terminated. Through this discussion, the reasons used by the judges in applying the no work no pay principle are explained which causes workers to lose their rights to process wages. As a follow-up, based on the previous discussion, the paradigm contained in the application of the no work no pay principle in the courts when determining process wages for workers whose employment relationship have been terminated.

2. METHOD

Based on the problems formulated, this research is then classified as non-doctrinal research by court decision study. The court decision used is the decision of the industrial relations court which includes the application of no work no pay to the determination of process wages for workers who have been terminated. The use of decision study is based on the belief that court decisions are not a value-free text, this indicates that a court decision can contain a certain spirit and interest. The court decision is used to find out the paradigm behind the application of the no work no pay principle. This article was prepared with reference to statutory regulations including Law Number 13 of 2003 concerning Manpower, and Law Number 6 of 2023 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to become Law. The study was carried out qualitatively in order to find out the depth of meaning in the judge’s legal considerations in his decision and the results were described in a prescriptive manner in the form of giving prescriptions related to the paradigm of the principle of no work no pay in court.10

3. DISCUSSION

3.1 Courts and Efforts to Fulfill Labor Rights

For a rule-of-law country, law enforcement is like the soul of a body that makes it alive. This shows the important role of law enforcement in a rule-of-law country, like Indonesia. Law enforcement ultimately becomes a face that shows the legal character of a country. In law enforcement, laws that were previously limited to ‘silent symbols’ in statutory regulations have turned into active symbols.11 The process of activating these symbols can occur, one of which is in court. The court will articulate abstract legal norms on a more specific and concrete level. In the discourse, there is a ‘dispute’ between the two camps in viewing the court. The first group is the group that is remanding the trial and all processes in it with optimism. The other group is a group that views the court and all processes within it with skepticism.

The optimistic group makes the court as a means to resolve conflicts and achieve justice. There are at least two assumptions why the court is trusted by the community to resolve the conflicts that surround it.12 First, the judicial process is structured in such a way as to be fair and impartial. Second, the individuals in it are considered as people who are capable of creating justice and impartiality. The court is an esoteric world, by him being able to solve problems by applying the law and producing appropriate and socially acceptable decisions. This belief is related to the ability of the court to create justice, and it is also recognized legally that the court helps justice seekers to obtain justice. Decisions are the outcome of conflict resolution carried out in court,13 which together with the outcome, justice is considered achieved.

10 Shidarta Shidarta, “Putusan Pengadilan sebagai Objek Penulisan Artikel Ilmiah,” Undang: Jurnal Hukum 5, no. 1 (2022): 105-142, 121-123.
Apart from being a means of resolving conflicts and achieving justice, the court is also seen as a means of legal reform. Moving on from the impossibility of the law to appear completely and thoroughly.\(^\text{14}\) No matter how sophisticated and perfect law is made, that law still has empty spaces that do not include complex social realities. Laws do not have the ability to reach social life down to the micro level, as well as a series of changes in society that are both predictable and even more unpredictable. As an example, the normative framework of Indonesian labor law still maintains the concept of protection based on traditional employment relations, even though, in reality, employment relations are already taking various new forms outside of traditional employment relationships. Because of this, the adage *het recht hink achter de feiten aan* being famous,\(^\text{15}\) which shows the limping of law as a social institution in following the development of society.

The staggered law has formed a gulf between society and law. Therefore, the court is burdened with the task of reconnecting the community with the law, after previously being separated by the chasm that arose as a result of changes in society. Through a decision which is a source of law, the court is expected to be able to respond to the positive law’s inaction in responding to the changes that have occurred. Laws are not as flexible as court decisions, often the conditions that were originally the basis for the presence of a legal norm-in-law have changed, developed, or even ceased to exist. However, the laws governing these conditions did not or have not changed.\(^\text{16}\) Therefore, legal changes are entrusted to legal institutions, namely the courts. It is important for court decisions to stand on the ground and see the existing reality, instead of just basing it on an abstract syllogistic framework that distances law from social reality.

Regarding the role of the court in connecting the gap between law and society, the court actually participates in the formation of law. Mainly through legal reasoning which ultimately forms a law that is needed by society. However, in the literature, there is debate related to the position of court decisions in two legal systems that are often compared, namely the civil law legal system and the common law legal system. Indonesia, which adheres to the civil law legal system, has the implication that a judge is not “really” bound by the decisions of previous judges as a judge in a common law country with the principle of stare decisis. A principle in which a court’s decision is expected to be the same as a previous decision regarding a situation or set of facts that has occurred before.\(^\text{17}\) Apart from the attachment factor of the judge to the previous decision, there are also differences between the two legal systems in terms of the role of the judge in forming the law. Judges in common law countries play an important role in shaping the law, while in civil law countries, a judge tends to be passive by applying or interpreting the law. Today, however, such distinctions are increasingly blurred and no longer firm. Judges in civil law countries also participate in making legal discoveries or even lead to judicial activism.\(^\text{18}\)

Moving from the optimistic group, the true trial is also viewed cynically by various groups. Cynicism towards the court appears in the argument presented by Wood\(^\text{19}\) who believes that the courts will always place property rights above other rights in order to gain profit. Wood’s argument seeks to position the court as an institution that works by paying respect to the rationality of capitalism. Courts are used to perpetuate the inequality and domination that exist under capitalism. The law and also the process of reasoning is just a method used by those who hold power in society to serve their interests. This argument is understood by placing legal reasoning carried out by judges in court as a political activity. Legal reasoning eventually becomes a political activity that produces a perspective that judges decide cases based on their beliefs about what is politically correct.


\(^{16}\) If seen from a legal and political perspective, this is because legal change is a political process that is subject to a calculation of profit and loss among the actors within it.


The basis above shows that there is an interaction between law and politics in court, including the judge’s legal reasoning. Manko\textsuperscript{20} explained that this interaction causes a judge to play two roles in an adjudication process. On the one hand, as a jurist who conducts legal reasoning, while on the other hand, he becomes a decision-maker for social conflicts that occur. Confrontationally, Manko\textsuperscript{21} emphasized that there has never even been an interpretation and legal reasoning that is free from ideological influences. This belief places the court’s decision will not resolve the conflict with a balanced view, instead, the court’s decision will pay great attention to one of the parties in the conflict while removing his views from the opposing party.

However, ideological and political involvement in the courts is often not felt by judges, the parties to the case as well as the wider community. This happens because the dominant ideology in society has given birth to a rational understanding and also the basic principles of morality.\textsuperscript{22} So when a judge decides a case, the decision will be considered based on rationality and also the principles of morality, instead of referring to it as an ideological appeal, as well as with other political appeals. Even without realizing it, a judge is significantly influenced by various attributes attached to him such as his past, ethnicity, cultural traditions, religious beliefs, and even class and gender relations, but sometimes this is not realized by judges or the wider community. Of course due to the success of the dominant ideology to stick to its own rationality and morality.

Instead of resolving conflicts and bridging the gap between law and society, courts have become an arena for ideological battles that often fail to achieve justice. Courts take away justice and replace it with injustice, thus creating the illusion that such a decision is fair. The parties and even the public are drugged by the illusion of justice that is created. This event can occur because judges are seen as people who have the power to bring about justice and are not positioned as ideological apparatuses who reason on the law to legitimize the interests of the ruling class.

For labor law, courts also play a role as courts do in other areas of law. Labor law has a special court which is the arena for material labor law enforcement, namely the industrial relations court. In short, the industrial relations court is a court that will specifically enforce and interpret material labor law against a concrete case that occurs in the labor field. Which court is a tripartite facility consisting of three judges, two of whom are judges from employer representatives and also labor representatives. Material labor law is a law that lays down the recognition of inequality between employers and workers. So that the substance of labor law at an ideal level seeks to provide protection to workers as a socio-economically weak party when compared to employers.

Even though at the ideal level, labor law seeks to protect workers, in practice, labor law is subject to various attacks. The attack on labor law basically states that labor law do not really provide protection for workers. This is because, in society, labor laws are in fact directed to protect groups that have economic power and interests.\textsuperscript{23} As labor law legitimizes inappropriate work such as outsourcing. Instead of protecting workers, labor law actually legitimizes the oppression of workers. Such a character is also found in courts and even legal reasoning. In the end, it becomes a marker of regressive action for the human dignity of workers, human rights, and the principle of non-commodification of labor.\textsuperscript{24} Simply put, the industrial relations court which should have protected workers after the labor law failed to protect workers, instead appeared as an institution that strengthened the oppression that had been legitimized in the labor law.

In the same historical trajectory, skepticism towards industrial relations courts has become something that is unavoidable. Values in court such as individualism, freedom of contract, and property rights tend to be aligned with the interests of employers rather than those of workers and unions. Even judges are believed to have a position contrary to the interests of workers and trade unions. The judges, in fact, have a position that

\textsuperscript{21} \textit{Ibid.}, 183.
\textsuperscript{24} \textit{Ibid.}
prioritizes the interests of capital compared to labor, as cynicism towards the industrial relations court is also seen in Arsalan and Putri who outlined efforts to abolish the industrial relations court due to its futility and failure to achieve its goals.

Despite all the skepticism towards the court, in fact, the court is an institution which, at the very least, has an ‘opportunity’ to make corrections to labor laws. Such as improvements to deregulation actions by the government and employers. Improvements to labor laws that do not protect workers are possible considering that in industrial relations courts, judges have the discretion to use their discretion and judgment in making fair decisions. Through its decisions, industrial relations courts can cover various events that occur in the field of labor law. Especially when there are events that are not regulated in the work agreement and do not get an explanation in the law so that judges at their discretion can carry out legal reasoning to protect the interests of workers.

For workers, courts can be a medium for improving rights when the legislation process is hijacked by various interests that negate the interests of workers. Like the Indonesian labor law legislation process which has been hijacked by today’s neo-liberalism, it is no doubt that the courts are the hope for workers to cancel the product of the legislation in question. In addition to testing legislation products, the court is also a place to confirm the implementation and enforcement of labor law. For example, confirming the calculation of severance pay or declaring the transfer of the work agreement from the one that was originally for a certain time to an indefinite time. However, this does not eliminate the fact that the courts are a space for ideological battles, so the victory for workers will depend heavily on the ideological battles they engage in.

3.2 Application of the No Work No Pay Principle in Determining Process Wages

No work no pay as a principle of labor law can be said based on the Latin phrase which reads "dies non juridicum", a phrase which literally can be interpreted as ‘the day the court does not carry out its duties’. When put in the work framework, "dies non" is a condition where workers do not work and do their job, as a consequence, workers also lose their right to wages. As with legal principles in general, no work no pay is an abstraction that forms or serves as the foundation of a concrete legal regulation and becomes the heart of a legal regulation. The realization of the principle of no work no pay can actually be removed from the content regulated in Article 1602b Burgerlijk Wetboek which outlines that no wages must be paid for the time during which the worker does not do the work promised. In more specific arrangements, no work no pay is reflected in the provisions of Article 40 of Government Regulation on Wages which emphasizes that workers will not have the right to wages when the worker concerned is not working.

It can be understood then that no work no pay is a legal principle that substantially contains the linkage and attachment of wages and work in the employment relationship between employers and workers. As with other legal relations, employment relations also have the possibility to be terminated through termination of employment. Even though termination of employment is mandated to be avoided, even as the last step that can

25 This can be seen from various court decisions, especially at the level of material and formal review of Law Number 11 of 2020 concerning Job Creation.
33 “Law Number 6 of 2023 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to become Law” § Government Gazette Republic of Indonesia of 2023 Number 41 (2023), art. 81 no. 40.
be taken, this does not prevent the practice of terminating employment relationship or even just a sweetening rule from the bitterness of termination of employment relationship. When the employment relationship ends, the attachment and linkage between wages and work also end, so that neither the company nor the workers have rights and obligations to the other party.

Termination of employment by the employer cannot be carried out unilaterally but must receive the acceptance of the workers. When the notice of termination of employment is rejected by the worker, efforts will be made to bipartite negotiations -two-way- between the worker or labor union and the employer. Which negotiations can lead to industrial relations disputes if bipartite negotiations do not reach an agreement.34 During the termination of employment dispute resolution phase, both employer and worker are required to continue carrying out their obligations as agreed upon until the termination of employment dispute settlement process is declared complete according to its level.35 This has implications for wages and work being tied up as the achievements promised by each party. The wages that are then received by the worker during the settlement of industrial relations disputes are referred to as process wages.

Process wages can be traced in various industrial relations court decisions, but these payments of process wages to workers are often canceled by a panel of judges at the cassation level. As found in Decision No. 11/ Pdt.Sus-PHI/2020/PN Pdg which provides process wages due to changes in worker status from those who were originally permanent workers to daily workers which have been preceded by the termination of employment by the employer, so that workers are declared entitled to process wages. However, at the cassation level, as stated in Decision No. 1219 K/Pdt.Sus-PHI/2020, the principle of no work no pay is applied because employers have confirmed that activities have been stopped and since then workers have no longer worked. Decision No. 11/ Pdt.Sus-PHI/2020/PN Pdg is also against the decision at the cassation level, namely Decision No. 1219 K/Pdt. Sus-PHI/2020 hereinafter referred to as First Decision.

Likewise in Second Decision which contains Decision No. 44/Pdt.Sus-PHI/2020/PN Gto juncto Decision No. 575 K/Pdt.Sus-PHI/2021 as a decision at the cassation level. At the first level, the worker gets process wages, because the employer no longer provides work that is their obligation. However, at the cassation level, the process wage was abolished. This is based on the consideration that workers do not do their job. This is the reason for the application of the principle of no work no pay by the panel of judges. The application of the last no work no pay principle can be found in Decision No. 234/Pdt.Sus-PHI/2020/PN Jkt Pst juncto Decision No. 1395 K/Pdt.Sus-PHI/2021, hereinafter referred to as Third Decision. In the first-level decision, process wages are given to workers because workers want to do work, but are prohibited by the employer. This is performed by the employer who considers that they have terminated the employment relationship. Then at the cassation level, process wages were abolished on the basis that workers no longer carry out their obligations to do the work agreed upon.

The application of the no work no pay principle in determining process wages are summarized in Table 1 below.

### Table 1. No Work No Pay in Determining Process Wages

<table>
<thead>
<tr>
<th>Decision</th>
<th>Verdict of Decisions</th>
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<tbody>
<tr>
<td></td>
<td>First Level</td>
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<tr>
<td></td>
<td>Cassation Level</td>
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<tr>
<td>First Decision</td>
<td>Process wages are paid to workers</td>
</tr>
<tr>
<td></td>
<td>The principle of no work no pay is enforced and process wages are eliminated because employers have announced the termination of activities and workers who are no longer working</td>
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</tbody>
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35 “Law Number 6 of 2023 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to become Law” § Government Gazette Republic of Indonesia of 2023 Number 41 (2023), art. 157A.
Second Decision | Process wages are paid to workers | The principle of no work no pay is enforced and process wages are eliminated because jobs are no longer available and workers are no longer working
---|---|---
Third Decision | Process wages are paid to workers | The principle of no work no pay is enforced and process wages are eliminated because workers are no longer carrying out their obligations as agreed

Source: processed by the author, 2022.

The industrial relations court at the first instance acts as a judex factie, deciding cases based on legal facts. Meanwhile, the Supreme Court acts as a judex juris, which has the authority to determine and examine the application of the law by courts at the judex factie level. Therefore, the corrections made by the Supreme Court at the cassation level are corrections for errors in the application of the law by the courts at the judex factie level. Based on this basis, the application of the no work no pay principle through improvements made by the Supreme Court shows the paradigm of the application of the no work no pay principle in Indonesian labor law as will be reviewed in the next sub-discussion.

3.3. No Work No Pay: Chains of Legal Positivism

3.3.1 A Paradigm of Applying the No Work No Pay Principle in Determining Process Wages

A paradigm is understood as a basic perspective or as a pattern of thinking that will become the basis for creating one’s interpretive understanding, both individually and collectively. So when talking about the legal paradigm, the conversation will focus on a basic perspective or pattern of thinking advanced by law. Law becomes a face that expresses that perspective.

The application of the principle of no work no pay by the courts has resulted in the cancellation of process wage payments to workers whose employment relationship have been terminated. The cancellation stated in the court decision above was carried out by correcting the first-level decision which was considered wrong in providing process wages for workers. If the injunction of a court decision is created from legal considerations as a result of reasoning carried out by the judge. Then these legal considerations then become the basis for judges in making decisions on a concrete case. Therefore, in order to advance the paradigm of applying the principle of no work no pay in determining process wages, the legal reasoning used by judges in the decisions above is first examined.

Through the series of decisions with permanent legal force above, it can be seen that the judge in annulling the payment of process wages to workers based his footing on the legal norms of Article 93 paragraph (1) of the Manpower law. The rule of law which is a manifestation of the principle of no work no pay, was previously only regulated in the Burgerlijk Wetboek which is open and complementary in nature. “Wage is not paid if the worker does not work and/or does not perform the work”, precisely reads the normative content of the principle of no work no pay. The judge placed this normative provision as a major premise, then placed the legal fact in the form of workers not coming to work as a minor premise. The judge draws a conclusion, the result of a syllogism, that workers are not entitled to wages. With such reasoning, the law is shown to work in a closed logic, in an empty building. The judge formulates the major premise as a determining factor obtained from the normative provisions of a statute, then applies it absolutely to the minor premise which is accepted as a truth.

The placement of a minor premise indicates the judge’s reasoning which interprets legal facts as something given. In fact, these legal facts have gone through the interpretation and evaluation phase. Therefore, legal facts are dressed up in such a way as to suit the need to legitimize the interests of one of the parties. The implication, the judge then set aside the legal facts that accompanied the legal facts which were used as a minor premise in the decision, namely the legal facts in the form of unemployed workers.

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36 Soetandyo Wignjosoebroto, Pergeseran Paradigma dalam Kajian-Kajian Sosial dan Hukum, 9.
37 See court decision No. 1219 K/Pdt.Sus-PHI/2020, 9; Decision No. 575 K/Pdt.Sus-PHI/2021, 4; Decision No.1395 K/Pdt.Sus-PHI/2021, 8.
The legal facts set aside in the decisions above are presented in Table 2. below.

<table>
<thead>
<tr>
<th>Decision</th>
<th>Facts Set Apart in the Decision</th>
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<tbody>
<tr>
<td>First Decision</td>
<td>The worker does not work because temporarily laid off due to unstable company conditions and</td>
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<tr>
<td></td>
<td>the worker is allowed to work but the status changes from permanent worker to daily worker.</td>
</tr>
<tr>
<td>Second Decision</td>
<td>The worker does not work because the work that should be provided by the employer is not available.</td>
</tr>
<tr>
<td>Third Decision</td>
<td>The worker does not work because there is a prohibition for workers to be in the company on</td>
</tr>
<tr>
<td></td>
<td>the pretext that the worker’s employment relationship has been terminated.</td>
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</tbody>
</table>

*Source: Processed by the author, 2022*

In the First Decision, the worker is employed without a written employment agreement for a period of 10 years. Mutatis mutandis, the employment agreement became an indefinite time employment agreement. Therefore, when the worker is not working because of a notification that they are resting, it must be seen as unavailability of work that must be provided by the employer. It was also revealed that the legal fact that the company’s condition was unstable, further strengthened the view that the workers who was not working were caused by a lack of work, not because the worker did not want to work and/or do their jobs. Concerning the transition of status from permanent worker to daily worker, it is necessary to give a firm line that a change in worker status must first be preceded by the termination of employment by the employer. So that the termination of employment and the refusal of the worker to work with the status of the daily worker must be seen separately and not related at all.

Likewise in the Second decision, the worker with the status of work agreements for an unspecified time are declared no longer doing their jobs. In fact, in the court of first instance, it was revealed that it was the employer who ran companies in the construction sector who had no more projects. With the status as a permanent worker, the absence of a project does not result in the termination of the employment relationship as happened in a work agreement for a certain time. So as long as there is no termination of employment, the worker is still entitled to wages, because the absence of a project is interpreted as a lack of work which has become an obligation for the employer.

The last fact that was overlooked as found in the Third Decision is that the worker no longer do their jobs due to the actions of the employer who prohibit the worker from being in the company area. This prohibition is based on the assumption that the employer has terminated the employment relationship of the worker concerned. At a later date, this termination of employment is considered invalid. That is, the worker does not work because the company no longer provides jobs for workers which manifests itself in the act of prohibiting workers from being in the company’s territory.

These overlooked facts show how judges in implementing no work no pay principle are only based on a closed logic system. Utilizing the law on the minor premise and ignoring the facts that accompany the minor premise used. The use of syllogistic logic by the judge shows that the judge’s activities are limited to connecting the legal facts examined with the provisions of the law. Without any effort to review the facts as a whole from a concrete event. Law enforcement by judges is no longer law enforcement, but enforcement of the law. Courts are no longer interpreted as a place to reach justice but are only interpreted as a place to apply the law. Enforcement problems like this in Indonesia are not something new. Law enforcement is one of the problems that plague the courts, especially judges. Whereas there is conservatism that causes the judge’s
ability to imagine justice to be weak so judges often make decisions that are contrary to justice. Judges who are seen as human beings who will resolve conflicts and create justice actually have no idea of justice. Instead of imagining justice, judges actually make normative provisions that are conditional on interests as provisions that are fair and only need to be applied to a concrete event in order to extract justice that has languished in the provisions of statutory regulations.

The use of closed logic with a syllogistic way of thinking is a framework for legal reasoning in the realm of legal positivism, as written by Hart. A nature in which parties and all processes in adjudication is considered neutral, including judges, laws, and reasoning. This recognition of neutrality is based on the belief that the law has stated this. Placing judges solely to apply the law is intended so that the values of justice that already exist in the law are not degraded by various subjective elements. Legal positivism strongly believes that the values of justice contained in a law can be degraded by the existence of subjective views such as morality in viewing the law.

With a closed logic system, the law then has a mechanistic-deterministic character. Law is seen as a machine that works automatically and will meet regularity. The law has no spirit and soul and moves in a regular and definite pattern of motion. The law is not affected by various changes that are outside the law or of a meta-juridical nature. Therefore, legal positivism understands that a legal decision that is right - not fair - can be produced through a process in the form of deduction of the rule of law without the need to pay attention to other matters outside the law such as morality, wisdom, and so on.

3.3.2 Breaking Off the Chains of Legal Positivism: Why is this needed?

Courts that are chained by legal positivism make legal reasoning merely an application of laws. Law is interpreted solely as a norm that exists in the statutory system. In short, the law is what has been written on paper or juridical sollen which is completely separated from das sein. The implication of simply applying this law makes legal issues only on wrong and right, the law will not question issues of justice or injustice. Even though the right law is not necessarily a just law, and vice versa, a just law is not necessarily the right law. So it is clear that applying statutory norms does not guarantee the creation of justice.

More than that, the chain of legal positivism in the courts has actually allowed the courts to merely become a tool that will legitimize the oppression of workers. When the court places normative provisions as a major premise whose truth cannot be doubted, the court has actually obscured the fact that normative provisions can be hijacked by various interests. Which interests can work so that labor rights are reduced in such a way, solely so that profits can be obtained. Therefore, the court’s absolute acceptance of normative provisions in a law text, makes the court contribute to perpetuating oppression and eliminating workers’ hope for justice.

Legal positivism ignores the issue of justice because the natural mind of legal positivism views the authorities as lawmakers who have loaded or predicted justice issues when the contents of law are discussed in a room where people’s representatives meet. This then causes issues of justice to no longer be relevant to be contested, questioned, or even questioned at the level of law enforcement. The discussion of justice has been completed at the stage of drafting laws and regulations, the normative provisions in the text of the law have had a precipitate of justice in them. Therefore, the application of the law is a matter of right or wrong, not a matter of fairness or injustice.

40 Herlambang P Wiratraman, Penegakan Hukum dan Penghormatan Hak Asasi Manusia, dalam Imran dan Festy Rahma Hidayati (ed.), Bunga Rampai Memperkuat Peradaban Hukum dan Ketatanegaraan Indonesia, (Jakarta: Komisi Yudisial Republik Indonesia, 2019), 145.
44 Shidarta Shidarta, Positivisme Hukum, 41.
The historical trajectory of legal positivism shows its connection with the historical development of capitalism. Legal positivism in its emergence has helped capitalism to reduce irrational things that do not support capitalism such as morality and emancipatory ideals that hinder the growth of capitalism or even become a threat to capitalism. The same thing was found by Weber when observing the development of capitalism in Europe by advancing a curiosity about why capitalism developed in Europe but not in other parts of the world. Weber then found that European law had a special framework that helped the birth of capitalism. Where European law separates law from other aspects such as political activity, as well as the rule of law which is free from the influence of religion and traditional values and decision making which is based on the application of rules which are free from political intervention.

In interpreting rational law, Weber placed at least five postulates showing the rationality of law or what he called formal rational law. The first is that every concrete legal decision is a form of applying abstract legal propositions to concrete facts. Second, every concrete case must be possible to be resolved through legal logic by using abstract legal propositions. Third, abstract legal propositions must really or at least be imagined as a system without loopholes. Fourth, everything that cannot be constructed rationally in law becomes legally irrelevant. Fifth, every social action is imagined as an application or violation of a legal proposition, because the legal system has no loopholes to produce legal order for all social behavior. Such Weber’s observations show the link between rational law and the development of capitalism. Laws that have certainty and can be calculated as the output of the syllogistic logic makes the actions taken by investors can be calculated.

Capitalism that can grow and develop with legal positivism indicates that legal positivism is a “fertile” legal thinking house with its ability to support the growth and development of capitalism. In the end, the paradigm of legal positivism in court makes investors able to calculate the actions they take. Of course, with the framework that if investors do A, then B will occur. This means that entrepreneurs can knowingly violate the law and are aware that they will be subject to sanctions. However, this is still being pursued by entrepreneurs. Because based on his calculations, the sanctions for violating the law are disproportionate -smaller- when compared to the benefits he gets from violating the law.

It has been mentioned previously that the court can be a medium for workers to fight for their rights, which rights are ignored by employers. For example, in First Decision, the worker rejected the change in status from permanent worker to daily worker. Of course, this refusal is based on the fact that by becoming a daily worker, rights such as paid leave, sick pay, and other normative rights will be reduced and disappear. By going before the court, the worker saves hope for protection from the transition of status along with the fulfillment of various rights that should be received by the worker. If then the court is chained by legal positivism, then the fulfillment of rights will only be based on statutory provisions. As a result, the worker categorized as those who refuse to do work and are punished for not getting the various rights they should receive.

Likewise with the determination of process wages for workers who experience termination of employment. The application of a closed system of logic in the courts has obscured the facts regarding the reasons why the worker do not work. Judges who adhere to a closed logic system in the style of legal positivism have made legal reasoning only a mere syllogistic process. So that wages will not be paid when the worker not doing work, without reading the existing reality regarding why and on what basis the worker not doing work. Such a thought process leads to the loss of workers’ rights when faced with termination of employment.

In the end, it is clear why the chain of legal positivism in courts, especially industrial relations courts, must be released. That the court has a major role in fulfilling labor rights which have been reduced for the benefit of investors. Moreover, when labor laws become a superstructure that legitimizes and perpetuates
existing production relations, courts chained by legal positivism will also legitimize suppression and reduction of labor rights for the benefit of investors. Courts must release the chain of legal positivism in their daily lives because labor laws are laws that are prone to being hijacked for the benefit of investors. Even when labor laws have the intention of protecting workers, the banality of capitalism has produced the character of investors who continue to try to trick the law in order to gain maximum profit, even by oppressing and exploiting workers. This further clarifies why the industrial relations court must abandon the chain of legal positivism. Courts must be present in order to provide protection for workers amidst the banality of investors and all their intrigues in deceiving labor law. The industrial relations court, which is separated from the chain of legal positivism, will make the court as a legal institution that makes corrections to labor laws that fail to provide protection to workers. The court is the final shield that will protect and legitimize workers’ rights which the labor law seeks to reduce.51

4. CONCLUSION

The principle of no work no pay is often used by courts in determining process wages for workers whose employment relationship have been terminated. The application of this principle has a logical consequence of the loss of process wages for workers, as found in First Decision, Second Decision, and Third Decision. Through the decisions which are the focus of the study in this article, it was revealed that the panel of judges placed normative provisions as a machine that was applied to a legal fact which they used as a minor premise. The panel of judges then ignored the facts that accompanied the minor premise they took. This shows that the application of the principle of no work no pay in determining process wages has a paradigm of legal positivism. As a result, workers must lose their rights to process wages. The chain of positivism within the courts makes the courts merely institutions that seek truth, not justice. Such a paradigm threatens workers who rely on the courts to fulfill their rights. Therefore, such a paradigm must be abandoned, solely so that the courts are able to become a shield protecting workers from labor laws that are increasingly not protecting workers.

REFERENCES


51 The significance of the court as a corrective institution against labor law can be observed from the granting of “workers”—a status that allows drivers to obtain normative rights from the law—to online motorcycle taxi drivers, who by law are only classified as “independent contractors” or partners, so they do not have rights like “workers”. See Uber BV vs. Aslam [2018] EWCA Civ 2748; Uber BV vs. Aslam [2021] UKSC 5.
Paradigm of Application of The No Work No Pay Principle in Determining Process Wages
Syahwal


Putusan No. 234/Pdt.Sus-PHI/2020/PN Jkt Pst juncto Putusan No. 1395 K/Pdt.Sus-PHI/2021, antara Dhemes Kakung Wisnungtoro melawan PT Supra Bakti Mandiri.

Putusan No. 44/Pdt.Sus-PHI/2020/PN Gto juncto Putusan No. 575 K/Pdt.Sus-PHI/2021, antara Wardi Mohamad melawan PT Sinar Karya Cahaya.


---------------. “Putusan Pengadilan sebagai Objek Penulisan Artikel Ilmiah.” Undang: Jurnal Hukum 5, no. 1 (2022): 105-142. DOI: 10.22437/ujh.5.1.105-142.


