

# LEGAL AMBIGUITY OR PROTECTION? THE IMPACT OF PROVISION DECISIONS ON CIVIL COURTS IN INDONESIA



Yoko Suvu Thorhave<sup>1</sup>, Yuhelson<sup>2</sup>, Atchara Salee<sup>3</sup>

<sup>1</sup>Doctor of Law Studies Program Postgraduate Program - Jayabaya University

<sup>3</sup>Rajamangala University Of Technology Krungthep - Thailand

Email :<sup>1</sup> [thorhavenmalau@gmail.com](mailto:thorhavenmalau@gmail.com), <sup>2</sup> [yuhelson2870@gmail.com](mailto:yuhelson2870@gmail.com),

<sup>3</sup> [Atchara.s@mail.rmutk.ac.th](mailto:Atchara.s@mail.rmutk.ac.th)

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## Keywords:

First keyword: Provision Decision  
Second keyword: Civil Procedure Law  
Third keyword: Temporary Legal Protection  
Fourth keyword: Judge Discretion  
Fifth keyword: Legal Certainty

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## ABSTRACT

Provisional awards in Indonesian civil courts are often used as a temporary legal protection mechanism for parties facing the risk of loss during the litigation process. However, the absence of explicit norms in the civil procedural law and the wide discretion of judges in their application have led to legal ambiguity and uncertainty in court practice. This research uses a normative juridical approach with an analysis of 25 court decisions from various levels to examine the extent to which provisions truly function as protectors of rights, or instead become potential legal deviations. The findings show that provisions are often decided without a clear basis and often touch on the substance of the case. This is contrary to the principles of procedural justice and legal certainty. This article proposes a conceptual model for the reformulation of provisions, including prima facie requirements, time limits for enforcement, and objection mechanisms, in order to ensure that the function of provisions remains within the framework of fair, proportional, and accountable protection. This research contributes to the strengthening of civil procedural law structures that are more responsive to rights protection and legal consistency.

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## Article History:

Received: 2025-08-23

Accepted: 2025-09-22

Published: 2025-09-30



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## 1. INTRODUCTION

In the Indonesian civil justice system, the existence of provisional decisions has become an important part of the dynamics of the legal process<sup>1</sup>. Provisional decisions serve as a form of temporary protection of the legal rights of the litigants, before the final decision on the subject matter is rendered<sup>2</sup>. However, in practice, the application of provisional decisions often causes polemics, both from the aspects of substance, procedure, and legal consequences.

Data compiled from the Directory of Decisions of the Indonesian Supreme Court shows that between 2019 and 2024 there were more than 1,500 civil cases at the district court level that included requests or applications for provisional decisions<sup>3</sup>. Of these, around 40% of the cases showed that there were further disputes related to the validity, implementation, or objections to the content of the provisional decision. In fact, there are some cases where the provisional decision actually directs the substance of the final decision, blurring the line between the preliminary assessment and the decision on the merits. This phenomenon shows that the use of provisions has not been fully consistent and can lead to legal uncertainty.

The urgency of this research lies in the importance of clarifying the position and limitations of provision decisions in Indonesian civil procedural law<sup>4</sup>. When a provisional ruling is not given based on clear normative standards, its main function as a form of legal protection can shift into a potential abuse of the judge's authority or even harm other parties whose rights have not been proven in the trial. Moreover, in practice, there are not a few cases where provisions actually hamper business processes, access to

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<sup>1</sup> F Esfandiari, Moh Fadli, and H Tegnan, "The Principle of Prudence and Scope Limitation in the Discussion of the Indonesian Constitutional Court: Implications for Legal Reform and Judicial Decision Making," *Journal of Law and Legal Reform* 6, no. 1 (n.d.): 449–480, <https://doi.org/10.15294/jllr.v6i1.8071>.

<sup>2</sup> S Rosenne, "Provisional Measures and Prima Facie Jurisdiction Revisited," in *Liber Amicorum Judge Shigeru Oda*, n.d., [https://doi.org/10.1163/9789004531161\\_039](https://doi.org/10.1163/9789004531161_039).

<sup>3</sup> H Swantoro, "Grounds and Mechanisms for Judicial Review of Civil Cases in Indonesia: A Starting Point for Legal Clarity and Efficiency," *Lex Publica* 10, no. 1 (n.d.), <https://doi.org/10.58829/lp.10.1.2023.191-214>.

<sup>4</sup> F Khairo and F F Busroh, "Implementation of Defiance of a Court Order for the Optimization of Execution Implementation in the Indonesian State Administration Jurisdiction," *International Journal of Criminal Justice Sciences* 18, no. 2 (n.d.), <https://doi.org/10.5281/zenodo.4756308>.

personal rights, or create legal impacts that are broader than just "temporary protection"<sup>5</sup>. This is important to be studied academically in order to find a normative basis and a solution that is fairer and more consistent in its application.

However, academic studies on provisional decisions are still very limited. Most civil procedural law literature only briefly mentions the position of provisions as part of interlocutory decisions, without discussing in depth the normative, jurisprudential, and practical aspects of their use. There are no specific regulations that explicitly regulate the procedures, requirements, or scope of provisional decisions in the HIR, RBg, or the latest Civil Procedure Law Bill. This has created a research gap between the importance of the provision function as a mechanism for rights protection and the lack of attention to aspects of procedural justice and legal certainty promised by the civil law system.

Based on this background, this research was conducted to critically analyze the position and impact of provision decisions on the process and outcome of civil justice in Indonesia. This research also seeks to build a conceptual framework to strengthen the regulation and practice of the application of provisional decisions to be in line with the principles of justice, legal certainty, and proportional protection of the rights of the parties. It is hoped that the results of this research can make an academic contribution to the development of civil procedural law and become a policy recommendation for the renewal of national regulations in the field of civil justice.

## **2. Research Objectives**

This research aims to comprehensively analyze the legal position and practical impact of provisional decisions in the Indonesian civil justice system. In particular, this research is directed at understanding whether provisional decisions represent a form of temporary legal protection or create ambiguity and uncertainty in the legal process.

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<sup>5</sup> M H Sianturi and N Viartasiwi, "Advocating the Temporary Rights to Work for Refugees and Asylum Seekers in Transit in Indonesia," *Indonesia Law Review* 11, no. 3 (n.d.), <https://doi.org/10.15742/ilrev.v11n3.2>.

It also seeks to identify the extent to which judges have discretion in making provisional decisions, and how the absence of explicit positive legal norms affects the consistency of provisional decisions across different levels of court. By examining decisions that have permanent legal force, this research tries to describe the pattern of application of provisions that has developed in judicial practice and find common ground between the interests of protecting temporary rights and guaranteeing the principle of legal certainty.

Another objective is to formulate a conceptual model or normative design that can be used as a framework for reforming civil procedural law, especially in regulating in more detail the mechanisms, procedures and limitations of provisional decisions. Thus, the results of this research not only provide a theoretical contribution to the study of civil procedural law, but also provide practical input for policy makers, judicial officials, and legal academics in designing a legal system that is more fair, proportional, and accountable.

### **3. Research Methodology**

This research uses a normative juridical approach<sup>6</sup>, an approach that focuses on analyzing the applicable legal norms, both those written in legislation and those that live in judicial practice through judges' decisions. This approach is considered relevant because the main focus of the research is to examine the legal position, function, and normative implications of provisional decisions in the Indonesian civil justice system.

The data sources used in this research consist of primary legal materials and secondary legal materials. Primary legal materials include positive legal provisions related to civil procedural law, such as the *Herziene Indonesisch Reglement (HIR)*, *Reglement op de Burgerlijke Rechtsvordering (RBg)*, and several laws that intersect with civil disputes, as well as court decisions related to provisions taken from the Directory of Decisions of the Supreme Court of the Republic of Indonesia. This research specifically examines and

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<sup>6</sup> R Deplano and N Tsagourias, "Research Methods in International Law: A Handbook," in *Research Methods in International Law: A Handbook*, n.d., <https://doi.org/10.4337/9781788972369>.

reviews 25 provision decisions from the District Court, High Court, and Supreme Court during the 2018-2024 period.

Meanwhile, secondary legal materials include relevant legal literature such as civil procedural law textbooks, scientific journals, legal articles, and experts' opinions related to the concept of legal protection, the principle of legal certainty, and judicial discretion in interlocutory decisions. The study of secondary legal materials is carried out to strengthen normative analysis and provide a theoretical basis for discussion.

The method of analysis used in this research is qualitative analysis with a deductive-inductive approach. The deductive approach is used to draw conclusions from general legal norms to concrete cases, while the inductive approach is used to build normative arguments based on trends and patterns in the practice of applying provision decisions by judges. Each decision was analyzed in terms of the reasons for granting the provision, its impact on the subject matter, and consistency with the applicable principles of civil procedural law.

To maintain the objectivity and replicability of the research, all jurisprudence data used was systematically recorded by including the case number, court level, and year of the decision. The researcher also compiled a comparison matrix between decisions to identify similarities and differences in the provision, and categorized them based on the type of dispute, the urgency of the provision, and its consequences on the rights of the parties.

With this methodology, it is hoped that the research can provide a complete and in-depth picture of the practice and legal problems surrounding provision decisions, as well as a solid basis for the preparation of a conceptual model for civil procedure law reform that is more adaptive to the needs of legal protection and legal certainty simultaneously.

## 4. Result

### 4.1 Inconsistency in the Application of Provision Decisions in Civil Court Practice

Provision decisions in civil court practice in Indonesia show a wide variation in their application<sup>7</sup>. Based on a review of 25 court decisions

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<sup>7</sup> S Butt and P Murharjanti, "What Constitutes Compliance? Legislative Responses to Constitutional Court Decisions in Indonesia," *International Journal of Constitutional Law* 20, no. 1 (n.d.), <https://doi.org/10.1093/icon/moac014>.

analyzed in this study, there is a tendency for inconsistency both in terms of the reasons for granting, the structure of considerations, and the content of the decision. This is an indication that although provisions have been widely applied, their legal basis is still vague and not rooted in explicit positive norms.

For example, in Supreme Court Decision No. 3452 K/Pdt/2018, a provision was imposed to stop the defendant's commercial activities on a disputed land on the grounds of "maintaining the status quo"<sup>8</sup>. However, it was not explained how the status quo was legally defined, and there was no objective indicator of the harm that could be caused without the provision. Meanwhile, in a similar case, such as Decision of PT DKI Jakarta No. 11/PDT/2021/PT.DKI, the request for provision was rejected on the grounds that there was no concrete threat to the defendant's rights that could be proven *prima facie*.

This discrepancy in similar decisions shows the absence of standardized guidelines that can serve as a standard in applying provisions. As a result, legal certainty as one of the fundamental principles in civil law is not fulfilled. When one case receives legal protection through a provision, while another case with the same characteristics does not, it can create an impression of unfairness in the judicial process.

Furthermore, it is not uncommon for the use of provisions to become a strategic tool for one party to secure a bargaining position in case negotiations or to create legal pressure on its opponent. This raises concerns that the function of provisions has moved beyond temporary protection and become part of a litigation tactic that can undermine the integrity of the courts.

## **4.2 Ambiguity between Protection and Uncertainty: A Theoretical Overview**

Theoretically, the role of provisional decisions should be in line with the concept of progressive legal protection as initiated by Satjipto Rahardjo, where the law is not only a static norm, but also a tool to create substantive

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<sup>8</sup> B Hermanto and N Mas Aryani, "Quo Vadis Specialised Courts in Indonesia within Constitutional Court Decisions Confines," *Jurnal Penelitian Hukum De Jure* 23, no. 4 (n.d.), <https://doi.org/10.30641/dejure.2023.v23.403-418>.

justice amidst the dynamics of society<sup>9</sup>. In this context, provisions are intended to fill the void of temporary protection in the judicial process, which often takes a long time.

However, this theoretical justification cannot be separated from the principle of legal certainty, which is the main pillar of the rule of law<sup>10</sup>. When provisions are given without clear limitations, the role of legal protection can actually turn into a source of uncertainty. This is especially true in civil law, where the stability and predictability of the legal process is a fundamental requirement in regulating civil relationships.

Gustav Radbruch in his theory states that law must combine three values: justice, expediency, and certainty<sup>11</sup>. A haphazardly issued provisional ruling may only fulfill one of the values (protection or expediency), but at the expense of certainty<sup>12</sup>. This contradicts the principle of integrative justice as described by Ronald Dworkin, which states that every legal decision must take into account the moral coherence and principal structure of the legal system as a whole<sup>13</sup>.

This ambiguity is even more glaring when there is no formal legal space to challenge the provision specifically. Parties aggrieved by a provision have no quick and efficient legal means to seek correction. Provisions cannot be appealed because they are not final decisions, while the protracted settlement time of the main case makes the injured party experience continuous losses.

### **4.3 Provision Decision in the Perspective of Judicial Discretion**

The application of provisions that relies heavily on the discretion of judges can be interpreted as discretion that is not always accompanied by

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<sup>9</sup> Herlindah and Y Darmawan, "Development Legal Theory and Progressive Legal Theory: A Review, In Indonesia's Contemporary Legal Reform," *Peradaban Journal of Law and Society* 1, no. 1 (n.d.), <https://doi.org/10.59001/pjls.v1i1.22>.

<sup>10</sup> O Shcherbanyuk, V Gordieiev, and L Bzova, "Legal Nature of the Principle of Legal Certainty as a Component Element of the Rule of Law," *Juridical Tribune* 13, no. 1 (n.d.), <https://doi.org/10.24818/TBJ/2023/13/1.02>.

<sup>11</sup> C V Giabardo, "Gustav Radbruch's Legal Philosophy and Theory of Legal Process," *Diritto and Questioni Pubbliche* 22, no. 2 (n.d.).

<sup>12</sup> N Nggilu et al., "Judicial Review of Constitutional Amendments: Comparison Between India, Germany, Colombia, and the Relevancy with Indonesia," *Lex Scientia Law Review* 8, no. 1 (n.d.): 261–298, <https://doi.org/10.15294/lslr.v8i1.1901>.

<sup>13</sup> S Ibric, "Ronald Dworkin: Seeking Truth and Justice through Responsibility," *Laws* 12, no. 3 (n.d.), <https://doi.org/10.3390/laws12030041>.

accountability. Whereas in the framework of checks and balances, discretion should always be controlled by the parameters of rationality, proportionality and transparency.

This research found that in more than half of the decisions analyzed, judges did not provide sufficiently in-depth legal considerations in explaining why provisions were granted or denied. Phrases such as "for the sake of justice" or "to prevent further harm" were often used without concrete benchmarks. This is contrary to the principle of due process of law, where every legal action of the state must be explained and accounted for openly.

Lon L. Fuller in his theory of the morality of law emphasizes that good law must not only be substantive, but also procedural<sup>14</sup>. This means that every legal process, including provisions, must meet the requirements of being understood, known and planned by the parties involved. When provisions are granted based on vague and inaccessible considerations, it undermines the legitimacy of the law itself.

Unrestricted discretion also risks creating disparities between jurisdictions, as not all judges have the same standard or interpretation of the "urgent" conditions on which the provision is based. In Indonesia's continental legal system, the presence of normative guidelines is essential to maintain consistency and predictability in the application of the law. Without it, judicial independence can fall into uncontrolled absolute power.

## 5. Discussion

In response to the above issues, this research proposes a conceptual model for reformulating the regulation of provisional decisions based on the principles of procedural justice and legal certainty. This model aims to balance the function of provisions as a form of temporary protection and the risk of legal ambiguity if not strictly regulated.

First, provisions should be legally defined as a form of temporary interim relief, granted only if there are circumstances that jeopardize a party's legal rights during the litigation process. This definition is important to distinguish it from other forms of interim relief that do not have direct implications for the object of the dispute.

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<sup>14</sup> I Y Larionov, V Y Perov, and A D Sevast'yanova, "Problem Of Morality Of The Rule Of Law Principle," *Historical, Philosophical, Political and Law Sciences, Culturology and Study of Art. Theory & Practice* 4 (n.d.), <https://doi.org/10.30853/manuscript.2018-4.15>.

Second, the granting of interim relief must be conditioned on prima facie evidence of irreparable harm and urgency. This is in line with the principles of interim relief prevalent in international judicial practice and civil procedure law in other civil law countries.

Third, provisions should be given a time limit or at the very least be subject to re-evaluation after the initial evidentiary stage has begun. This is to prevent the provision from becoming a "permanent temporary decision", which would negate the main role of the main evidentiary process.

Fourth, there needs to be a mechanism for examining objections to provisions, so that aggrieved parties have access to quick and effective legal correction. This can be done through a limited appeal scheme that specifically tests the proportionality of provisions.

This model is expected to be the initial framework in the reformulation of civil procedural law, either in the form of a revision of the HIR/RBg or through the issuance of a technical but binding Supreme Court Regulation (Perma). Thus, the provision can truly fulfill its role as a tool of legal protection that is fair, proportional, and in accordance with the principles of the rule of law.

## **6. Scientific Novelty and Research Contribution**

This research provides scientific novelty in the study of civil procedural law, especially in clarifying the legal position of provisional decisions that have so far remained in a juridical gray area. So far, most civil procedural law literature in Indonesia tends to place provisions as a technical part of interlocutory decisions without critically exploring their juridical implications for legal protection and legal certainty. In fact, most legal doctrines emphasize the procedural aspects of the provision rather than reviewing the depth of its substance as a form of legal protection or its potential ambiguity in judicial practice.

The novelty of this research lies in the dualistic analysis of the function of provisions: as a means of temporary legal protection and at the same time as a source of legal uncertainty if not strictly regulated. This research not only exposes inconsistencies in the practice of applying provisions in court, but also builds a conceptual approach to the reformulation of provision norms in the national civil procedure law system. As such, this research is not only descriptive but also prescriptive and constructive, offering normative solutions based on theory and actual judicial practice.

In addition, this research makes a scientific contribution by combining the theories of progressive legal protection, legal certainty in the rule of law, and judicial discretion in modern courts to analyze the institutional and operational structure of provisions. The theoretical framework used not only explains the status of provisions from a legal dogmatic perspective, but also provides a critical approach to the relationship between procedural justice and substantive justice in the context of provisions that still lack regulation.

Practically, the contribution of this research is very relevant for policy makers (regulators), judges, and legal academics. For regulators, this research can serve as a reference in drafting new norms in civil procedural law, both in the form of revisions to laws and technical regulations such as Supreme Court Regulations (Perma). For judges, the findings of this research can be used as a foothold to be more careful and argumentative in imposing provisional decisions that concern the legal rights of the parties. As for academics, this research opens a new space in the discussion of contemporary civil procedural law that is more adaptive to issues of rights protection and procedural justice.

Furthermore, the conceptual model proposed in this research can be tested in civil courts on a limited basis as part of the innovation of a modern judicial system that prioritizes the effectiveness of legal protection without sacrificing judicial certainty and accountability. Thus, the resulting contribution does not only stop at the theoretical level, but also reaches an implemented dimension that can be applied in national judicial practice.

## **7. Conclusion**

This study concludes that provision decisions in the Indonesian civil justice system are in an ambiguous position, both normatively and practically. On the one hand, provisions have great potential as an instrument of temporary legal protection for parties facing the risk of loss during the litigation process. However, on the other hand, the absence of explicit normative regulation and the absence of standardized standards in its application make provisions a source of legal uncertainty and even open the door to abuse of authority.

An analysis of a number of court decisions shows that there are fundamental inconsistencies in the judges' juridical considerations when

imposing or rejecting provisions. Judicial discretion that is too broad without clear legal limitations results in disparities between decisions and creates a perception of unfairness. This is exacerbated by the absence of a specific mechanism by which a party aggrieved by a provision can quickly and effectively file a correction or objection. As a result, provisions that are supposed to be temporary and preventive in nature can turn into a form of premature punishment that harms one of the parties.

Theoretically, provisions should fulfill the function of legal protection within the framework of procedural justice balanced with the principle of legal certainty. Therefore, there is a need for reformative measures on the position, requirements, procedures, and limitations of provisions in national civil procedural law. The conceptual model proposed in this study-in the form of legal definitions, prima facie requirements, provision time limits, and objection mechanisms-offers a more comprehensive normative approach to address the duality between protection and legal ambiguity.

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