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Strengthening of Industrial Relations Courts as Efforts to Provide Legal Justice for Labourer

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Abstract

Industrial relations had increasingly complex problems when the era of industrialization began. Many disputes that arise between workers or workers and employers, workers with the government, trade unions or labour unions with employers and many other conflicts require official institutions to settle a disputes of industrial relations. So that the formation the act of the republic Indonesia No. 2 of the year 2004 concerning of Industrial Relations Disputes Settlement. This paper has praise to find out the implementation and industrial relations disputes settlement through the court of Industrial relations, in addition to strengthening the mediation function in resolving industrial relations disputes, and making that a judicial institution capable of providing legal justice for labourer and workers. The results of this paper conduct settlement of industrial relations in the court, which consists of several disputes concerning human rights, interest disputes, over termination of employment, between labour unions in one company disputes. So that the mediation is needed for the settlement of industrial relations disputes, because it is indeed far better and faster to resolve when compared to being resolved in the court of industrial relations. Bearing in mind that the industrial relations disputes settlement can be implemented at the court of industrial relations it will take a long time. In addition, to strengthen the Industrial Relations Court, concrete efforts are needed to realize the principle of fast, simple and low cost, so that litigants can obtain justice which is the core of a court process.

Keywords: *Strengthening, Industrial Relations, Legal Justice, Labourer.*

INTRODUCTION

One of the legal considerations for the issuance the act of the republic Indonesia Number 2 of the year 2004 concerning Industrial Relations Dispute Settlement (PPHI in *Bahasa Indonesia*) the letter of b states "That in the era of industrialization, the problem of industrial disputes have become more frequent and complex, so that it is necessary to establish institutions and mechanisms for settlement of industrial disputes that are prompt, appropriate, just, and inexpensive" (Ibrahim, 2019). Based on this consideration, the Court of Industrial Relations was born, which tried cases of disputes between labour and employers (Buud, 2004).

The court of industrial relations (PHI in speak *Indonesia*) is part of the legal reform effort in Indonesia specifically in the area of labour law. The presence of the Industrial Relations Court is expected to bring change to the workers' struggle to fight for their rights which so far have been perceived as not getting justice and legal certainty due to the lack of legal instruments that are less supportive (Gabel & Mansfield, 2002). Since the enactment of the PPHI Law in its implementation, legal issues have arisen that have resulted in the process of resolving industrial disputes so that they last long and are expensive. This is due to the fact that the PPHI Law has a paradigm of conflict because it only gives an opportunity to those who want to win the case, while those who want to solve the problem are not given the freedom in using the mechanism offered by the PPHI Law (Pittman, 2001). This fact is reflected in the difference in the authority of the PHI compared to the authority of arbitration (Bingham & Mesch, 2000).

Under the PPHI Law in Indonesia, PHI is given the authority to settle all types related to industrial relations disputes both in the problem of rights, conflicts of interest, over termination of employment and disputes between labour unions (Harianto et al., 2018). The parties who want to win the case are through the court (litigation), while the parties who want

to solve the problem do not go through the court (non-litigation) but go to arbitration as an alternative dispute resolution. Likewise, parties who settle work relationship disputes or rights disputes cannot resolve it through arbitration (must go through the PHI path) (Boucher & Segal, 1995). Yet according to Lu (2007) labor disputes are disputes about termination of employment and disputes over rights. Another problem is the accumulation of PPHI cases in the PHI and in the Supreme Court, which is caused, among others, by the malfunctioning of bipartite institutions and mediation institutions in PPHI (Sejati, 2018).

This shows that legally written raises the opinion that the mediation institution is still very weak, because there are still mediators who only give recommendations that are not binding to various parties and other than that certain parties can reject it, so in the end the unfinished case revolves to the PHI (Mashdurohatun & Leviza, 2019). Of the various issues that revolved around the PHI, the problem was more often the number of decisions by the central labor dispute resolution committee with permanent legal force that could not be executed, this was because it was not explicitly regulated in the PPHI Law. (Pratikno, 2019). In addition, in the future all legal processes must be classified with computational methods that can be started by changing business processes and management that are accommodated in big data (Al-Khowarizmi et al., 2020; Elfrianto et al., 2020). So that all good decisions are taken legally and based on operational standards based on the system (Prayundani et al., 2019; Lubis et al., 2019).

LITERATURE REVIEW

Industrial Relations

Industrial relations was adopted from the word labor relation, meaning labor relations, the term originally referred to the problem of workers and employers. However, this perception changes along with the development of labor cases in the field. Because the dispute that occurred not only involved companies and workers, but also the government and the community. In fact, consumers, corporate user products, and suppliers (Haiven et al., 2020).

Meanwhile, workers must be responsible for working optimally. Workers are also not allowed to have an opinion; the company only prioritizes the interests of entrepreneurs (Tanaka, 2020). Next, the third principle; there is a clear functional relationship and division of labor between employers and workers. Based on the third principle, employers must treat workers well (Kaplin et al., 2020). For example, providing decent wages and vacation time. Instead, workers must carry out tasks according to their respective portions. These things must be supported by the fourth principle, namely kinship. Both company management and employees must be respectful, loving, and helpful. The fifth principle, in industrial relations must create business peace and serenity at work. Thus, it can improve the performance of workers and employers in the company. The last principle is every production activity or company must aim to improve the well-being of the labourer and employers. That is, employers must provide an adequate salary if workers can work optimally (Fort & Scipani, 2004).

Labourer

The term labour is often pinned to blue collar workers. In English, the term labor is often paired with laborers. The Oxford Dictionary defines laborers as people who have work that involves hard and unskilled physical work, especially in work done outdoors. The laborers are factory workers, farm workers, laundry workers, construction workers, plantation workers, and others. Almost no one has ever used bank workers, government workers, etc. (Braveman, 1998; Mayhew, 2019; Elfrianto et al., 2020).

Indeed in an industrial relationship that is the relationship between labourers and employers, the term labour is the antithesis of the employer (Widyanti et al., 2020). This is affirmed in Indonesian Law No. 13/2003 concerning employment states that workers and laborers are all people who work for wages or other forms of remuneration. The Big

Indonesian Dictionary (KBBI) also defines workers' entries as people who work for other people with a salary (Sneddon, 2006).

RESULT AND DISCUSSION

The Industrial Relations Disputes Settlement through the Court of Industrial Relations

The Court of Industrial Relations (PHI) adjudicates 4 industrial relations disputes such as the problem of rights, interest disputes, over employment relations and disputes between labour unions. Industrial relations is relationship system to establish the production of goods and or services from employers, laborers and the government based on the contents of the Pancasila values and the 1945 Constitution of the Republic of Indonesia.

In fact, industrial relations have a tripartite relationship between employers as employers and welfare; laborers as workers who receive wages and have obligations; and the Government as a party representing the community by establishing labour laws and regulations and carrying out surveillance and action against violations of the regulations. These three components actually interact with each other. The interaction between the government, employers and workers in fostering balanced and harmonious work relations is what is called industrial relations (Suparman, 2009).

The connection between disputes in industrial relations was started because there were differences of opinion in the dispute between businessman and labour or labour union caused by disputes on the rights of both, disputes that arose such as interest disputes, disputes about termination of businessman and disputes between labour unions in one company (Mulyadi & Subroto, 2011). In carrying out industrial relations, as an businessman and several businessman organizations, the aim is to create cooperation with partners, develop products, expand labour acceptance and provide labour welfare, create a democratic atmosphere and act fairly. However, laborers or trade unions in carrying out industrial relations have the obligation to carry out work in accordance with their obligations and operational standards, maintain discipline, increase morale, develop skills in their expertise and make companies advance in competition (Pujiyo, 2012).

In carrying out the functions of each of these employers and workers as specified, sometimes violated by one party and consequently will lead to a dispute (dispute) between them. Those who feel their rights have been violated can claim these rights, and vice versa. Finally, the parties no longer agree and consider the relationship between them to be no longer harmonious, so each party who feels disadvantaged will exercise their right to submit their case to an industrial court. There are differences of opinion between businessman and labour or labour union which can lead to a debate over relations within the scope of the company and delegate the case through to the Court of Industrial Relations. This is what came to be called the industrial relations dispute (Sutedi, 2009).

The issuance the act of the republic of Indonesia No. 2 of the year 2004 concerning Industrial Relations Disputes Settlement (PPHI) has created a model for resolving various problems that arise between employers and workers. This PPHI Law is a regulation related to act of the republic of Indonesia Number 13 of year 2003 concerning employment. As a special court in the general justice system, PHI uses the system in HIR and RBg, like a general court (Tobing, 2018). There are only a few exceptions, for example for free court fees, for cases worth under 150,000,000 IDR equivalent to 10616.56 USD or for an Ad hoc Judge from a proposed trade union and employer organization. In general, starting from registering a lawsuit to executing a decision, all follow the system contained in the HIR or RBg. (Simangunsong et al., 2009).

Industrial relations are related to the interests of labour and businessman and have the potential to cause differences of opinion and cause disputes between the two parties. In the era of industrialization, industrial disputes are becoming increasingly frequent and complex, so that it is necessary to establish institutions and mechanisms for the resolution of industrial

disputes that are fast, precise, fair, and inexpensive that are never needed to realize existing laws and regulations (Tobing, 2018).

The emergence of the idea that the presence of industrial relations dispute settlement institutions that are fast, precise, fair and inexpensive, was born from a thought to realize social justice in handling industrial relations disputes involving two disputing parties, namely employers and workers / laborers. Employers are in a strong position in socioeconomic status while workers / laborers are in a weak position, which depends on their source of income by working for employers or employers. Both employers and workers actually have the dignity of human dignity (Agusmidah, 2007).

Based on the above conditions, the actual position of the labourer should not be a barrier for him to obtain justice in the Court of Industrial Relations. The existence and urgency on the Court of Industrial Relations is a hope for justice seekers, especially laborers, despite the poor substance of the previous labour procedural law. Public expectations of industrial relations courts are expected to be able to uphold legal authority, legal certainty and justice. (Tobing, 2018). Indonesian Law with No. 2 in 2004 concerning PPHI adopts an industrial relations dispute resolution system by giving full authority to the judiciary. The mechanism is through bipartite and mediation outside the judicial authority, the process product does not have binding legal force. It is different with the product and decision from The Industrial Relations Court and decisions at the Supreme Court level are binding and have legal force for the parties. Courts in the Industrial Relations Court and the Supreme Court are all determined by Judges, career judges and ad hoc judges from the elements of Labour Unions and elements of employers (Mashuri, 2016).

In practice, the resolution of industrial relations disputes through the Industrial Relations Court takes a protracted time causing legal uncertainty. According to the provisions of Civil Law generally applicable, the process of dispute resolution related to Industrial Relations, can be started from the process of lawsuits, appeals, cassation, resistance (verzet) and review (PK). Ironically, in these processes the deadline for settlement of cases is not determined, so if it is guided by the provisions of this general Civil Procedure Code, handling the case will take a long time to take years.

This was then used as a basis for the reference to the birth of the PPHI Law that applies specifically, namely to specify matters that are not specified in the general provisions, for example there is no appeal for legal action in handling cases related to Rights Disputes and Termination of Work Termination (PHK). Then the determination of the deadline for settlement was reached at the level, for example in the Industrial Relations Court it was determined that the Judge had to decide the case for 30 (thirty) working days (Article 103 of the PPHI Law); whereas in the Supreme Court for 30 (thirty) days of work (Article 115 of the PPHI Law). So for 30 (thirty) working days plus a case process in the Department of Labour (tripartite) for 30 (thirty) working days (Article 15 in conjunction with Article 25 of the PPHI Law), then within a period of 110 the working day on industrial relations disputes must end.

In fact, the majority of industrial relations matters relating to the problem of rights and over termination of employment take quite a long time. The case experienced by Tobing (2018) as a worker who had been laid off by PT Rimba Melati in case number 76 / G / 2007 / PHI.Mdn., Where workers who had a work accident that resulted in the left index finger of the worker was broken because it was cut off by a can . As a result workers can not work as usual. In the first month to the third month, the company still provides salaries, but in the fourth month onwards the company no longer provides salaries. Thus the company has legally laid off unilaterally without giving rights in the form of severance pay and service fees for workers who have worked for 8 (eight) years, namely from 1999 to 2007.

Since the company has laid off workers, in May 2007, the employee filed a lawsuit against the PHI and the Judge of the PHI gave its decision in July 2007 by granting the

demands of the workers. The company then appealed to the Supreme Court and the Supreme Court justified in March 2008 by strengthening the PHI decision. Upon the verdict from the Supreme Court, the company then filed a Review (PK) to the Supreme Court in 2009 and until now the Supreme Court in the case of Review of Erwin Sihombinng's lawsuit has not issued a decision.

Strengthening the Mediation Function in Settling Industrial Relations Disputes

The regulation does regulate that the disputes resolution process at the judiciary should be based on the principle of fast, simple and low cost. Facts on the ground show that these principles have never been achieved due to several factors. Seeing the settlement of disputes through the court (litigation) which takes a long time, then there are solutions provided to resolve disputes with a relatively short time, namely through mediation and arbitration. The enactment the act of the republic of Indonesian Number 2 of the year 2004 concerning industrial relations settlement disputes which is then linked to the implementing regulations on the industrial relations settlement, a description is obtaining the process of settling industrial relations has experienced very complex developments. The complexity lies in handling the dispute when it can be taken with 2 channels, namely: firstly the judicial route, namely the settlement of disputes through the judicial route that has been regulated in the judicial system that the Judges have been added to Ad-Hoc Judges, whose litigation process runs in general justice. The justice system in the general court only consists of 2 levels, namely the industrial relations settlement disputes at the first level and the cassation level. This change is obviously changing the pseudo justice system which was originally a labour dispute handled by P4D or P4P. This system is expected to be able and effective so that in this way the Judges in the industrial relations court have applied aspects of legal justice to both workers and employers. The second path to handling disputes outside the court is through reconciliation, arbitration and mediation. (Yunarko, 2011).

Industrial relations mediation is a right to the problem of rights, interest disputes, about termination of employment and disputes between labour unions, if disputes are only at one company, it is sufficient through deliberations that require a neutral mediator (Tambusai, 2005). Settlement through mediation is done through non-severe so-called mediators. Mediating is an intervention against disputes by an acceptable third party that is impartial and neutral such as the referee at a match and can help the two disputing parties to get mutual agreement on the conflict in dispute (Rumambi, 2015).

Mediation problem solving is a solution made by the presence of a referee called the mediator who is responsible for the field of district or city labor in Indonesia (Article 8 of Law Number 2 of 2004). The mediator is a third party as an intermediary who must be neutral in resolving disputes. (Yetniwati, Hartati & Meriyarni, 2014). The provisions of Article 9 from act of the republic of Indonesia Number 2 of year 2004 regulate the conditions of being a mediator, namely faith and devotion to God Almighty; Indonesian citizen, able-bodied; mastering labor regulations; authoritative, honest; just and behaves impeccably; educated at least undergraduate (S1); has the legitimacy of the Minister of Employers and Transmigration. This regulation shows that mediators are civil servants (now referred to as state civil servants) who must comply with the Civil Service Law.

Mediasi dapat menyelesaikan penyelesaian sengketa, memprioritaskan resolusi musyawarah untuk mencapai konsensus, dan jika negosiasi dapat dicapai dengan membuat perjanjian bersama yang ditandatangani oleh kedua belah pihak dan disaksikan oleh mediator berikutnya, proses hukum dimasukkan ke Pengadilan Hubungan Industrial untuk mendapatkan sertifikat pendaftaran (Tambusai, 2005).

According Tambusai (2005) if the resolution of the problem through mediation in the absence of an agreement is reached then the next settlement process can be carried out as follows:

a. Mediators who act as referees give written suggestions as opinions or suggestions to be proposed to both parties to resolve their problems.

b. If the recommendation is not later more than 10 days in working hours from the mediating must be submitted to both parties.

c. Both parties must provide a written response to the mediator whose contents approve or reject no later more than 10 days during working hours after receiving the suggestion.

d. If one of the parties does not provide an answer, it is considered as rejectly the recommendation.

However, if both parties agree on the recommendation, then in no later than 3 days during the mediator's working hours must have finished helping the parties make a memorandum of understanding (MoU) to be re-registered at the Industrial Relations Court to obtain proof of registration. Based on general provisions, dispute resolution through mediation may not have an element of coercion between the two parties and the mediator.

Mediation can also be done because both parties intentionally or deliberately do not want to meet with each other even though they can meet, if it is desired (Pradima, 2013). Based on the Regulations issued by the Supreme Court of the Republic of Indonesia Number 1 of the year 2008 concerning Procedures of Mediating in the Court it is stated that mediation is one of the faster and cheaper dispute resolution processes, and can provide greater access for the parties to find satisfactory resolutions and fulfill a sense of justice.

Integration of mediation into the court proceedings can be an effective instrument in overcoming the problem of case stock in the court as well as strengthening and maximizing the functioning of court institutions in dispute resolution in addition to adjudicative judicial processes. The success rate of mediation is very much determined by the mediator, therefore a mediator must have certain qualifications as a mediator. Mastery of material employment issues is not an absolute necessity (Irawan, 2013).

Strengthening the Function of Industrial Relations Courts as Institutions that Provide Justice for Workers

The understanding of industrial relations based on Article 1 paragraph 16 the act of the republic of Indonesia Number 12 of year 2003 explains a system of relationships formed between actors in the production process of new goods and or services consisting of elements of businessman, laborers and the government based on Pancasila values and the constitutional Republic of Indonesia of the year 1945. Based on the above definition elements of industrial relations can be described, namely the existence of an industrial relations system, the existence of actors which include employers, laborers and the government the process of producing items and services (Wijayanti, 2009).

The existence of industrial relations certainly has the potential for conflicts of interest between labour, businessman and the government in the process of producing items and services. For this reason, we need a judicial institution that is able to provide a sense of justice for the disputing parties. The court of industrial relations is a special court established in the general court environment that has the authority to adjudicate and settle industrial relations disputes based on the act of the republic of Indonesia Number 2 of the year 2004 so that the operation of the industrial relations court turns out to provide a fairly fundamental change. The change will take the form that if all this time industrial dispute resolution, which has been under the executive sphere, is now part of the judicial system under judicial authority (Fatimah, 2011).

The most common problem to the process of resolving industrial relations disputes is the failure to realize simple principles and low costs, which are important principles in the resolution of cases. The simplicity in resolving any dispute can be seen from 2 dimensions, which are seen from the requirements and seen from how many institutions are authorized to handle it. The industrial relations dispute settlement act normatively regulates the

requirements for filing a lawsuit, one of the parties submitting each claim must attach a minutes of dispute resolution handled by both the mediator and the conciliator.

Article 83 paragraph 1 from act of the republic of Indonesian on PPHI states that the filing of a claim that is not accompanied by a minutes of settlement through mediation or conciliation, the Industrial Relations Court Judge must return the Plaintiff's claim. So if industrial relations disputes especially those related to rights disputes and disputes over termination of employment, one of the parties, whether the worker or the company that filed the claim, is enough to attach the minutes issued by the Mediator or Conciliator, if no agreement is reached in mediation or conciliation. This is a requirement both for the parties to the dispute and for the PHI Judge to be able to resolve and decide the lawsuit filed against him. If there is no minutes from the mediator, the Judge must return the claim to the plaintiff.

The publication of the minutes from the mediator or conciliator does not stand alone. It turns out that before the mediator or conciliator publishes his treatise as an attachment in the lawsuit, the mediator or conciliator in resolving the dispute in a tripartite manner first accepts the bipartite settlement minutes signed by the parties to the dispute, if not, then the mediator or conciliator must return the file to the parties to be completed.

After the mediator or conciliator accepts this treatise, then they can follow up and resolve the parties in a tripartite manner, so that it can be said that the minutes signed by the parties become the basis for the Mediator or Conciliator to publish the minutes, while the minutes of the mediator or conciliator are also used as a basis for the Judges in handling disputes over rights and labour disputes. The two disputes are related because both the rights dispute and termination disputes are caused because these two disputes do not end at the first level Industrial Relations Court, but there are still other legal remedies namely cassation and reconsideration, so these two disputes are a barometer in principle simple as in Article 56 of the Indonesian Law Regarding PPHI.

Judging from the dimensions of the competent institution in handling industrial relations disputes, the simple principle applies to interest disputes and between labour unions because this dispute only ends with the IRC. This shows that in handling over rights and termination of businessman disputes this principle does not apply, because the decision of the Judge of the PHI is not the final and is still justified by the parties submitting other legal remedies in the form of cassation and reconsideration to the Supreme Court. Thus the simple principle did not materialize in the dispute of rights and disputes over termination of employment because in the settlement of industrial relations disputes many agencies involved, namely the PHI, the Supreme Court for the cassation process and also in the review process, plus the execution process which also involved the Auction Office Country.

Based on the facts above, it shows that litigation in the court of industrial relations is a long and winding and costly legal remedy. Conditions of dispute resolution are not in accordance with the character of industrial relations disputes which are based on the principle of guaranteeing dispute resolution that is fast, precise, fair, simple, and low-cost (Mashari, 2016). Judges at the Industrial Relations Court should be able to provide a sense of justice to laborers, due to the fact shows that the majority who filed a lawsuit to the Industrial Relations Court were workers. The type of case sued is termination of businessman (FLE). This shows that the party filing the lawsuit is a party that is economically classified as a person who is less capable. Thus, the PHI Judge not only looks at the material law but also sees it from the human side.

The PHI judge must also be able to carry out the principle of equality before the law, because those who are litigants are entrepreneurs with workers, of course entrepreneurs have better economic conditions than workers. Aligning employers and ignorant of labour rights, then unjustly deciding cases, is the biggest betrayal of the judges. In resolving industrial relations disputes, the PHI Judge should view the parties in a balanced position, so that when

deciding a dispute, the decision can be taken fairly. Thus, PHI has integrity and can be trusted by labour and employers as those who seek justice.

CONCLUSION

In Summary, That every industrial relations settlement conducted by the court of industrial relations is in the case at the first level regarding the problem of rights, disputes interest, over termination of businessman, disputes between labour union in one company. That mediation needs to be done to settle industrial relations disputes, because it is indeed better and quicker to resolve when compared to being settled at the court of industrial relations. This is because the industrial relations dispute resolution if carried out in the court of industrial relations takes a long time. That in order to strengthen the Industrial Relations Court a concrete effort is needed to realize the principle of fast, simple and low cost, so that litigants can obtain justice which is the core of a court process.

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