The settlement of the industrial relation dispute in Indonesia

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THE SETTLEMENT OF THE INDUSTRIAL RELATION DISPUTE IN INDONESIA

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The parts of industrial relation are workers and employers. The relation between them is based on freedom of contract principle. The parties have difference purpose that easier evoke dispute. There are two kind of industrial relation dispute settlement, non-litigation and litigation settlement. The mediator has function to resolve the industrial or labour dispute according to Law No 2 of 2004. Mediation is an alternative dispute resolution to resolve industrial conflict. Mediation by civil servant from Man Power Department make the simply ways and cut the high cost. But, if the conflict cannot be solved by mediation or if the parties disagree about the suggestion they can continue go to industrial trial. The main issue is what the ideal model in industrial relation dispute solution. The method in this article is socio legal research. Start from the regulation, implementation, collect the problem from the process, sorting the problem and then will make the model for solution of industrial relation dispute.

Keywords: industrial relation conflict, mediation, mediator, problem solver, Industrial Court.

УРЕГУЛИРОВАНИЕ СПОРА В ТРУДОВЫХ ОТНОШЕНИЯХ В ИНДОНЕЗИИ

Рамли Л.

Субъектами трудовых отношений являются рабочие и работодатели. Эти отношения между сторонами основаны на принципе свободы договора, но они имеют разные цели, которые могут привести к спорным ситуациям. Существуют два вида урегулирования трудовых споров – во внесудебном и судебном порядке. В соответствии с законом № 2 от 2004 года функции медиатора заключаются в разрешении производственного или трудового спора. Медиация – это альтернативное решение трудовых конфликтов. Медиатором

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выступает государственный служащий Департамента трудовых ресурсов, что упрощает процесс разбирательства и экономит средства. Но, если конфликт не может быть решен путем медиации или если стороны не могут прийти к мировому соглашению, они могут пойти в суд. Главный вопрос в том, какой будет идеальная модель в отношении решения трудовых споров. Данная статья представляет собой социально-правовое исследование. Урегулирование спора начинается с изучения вопроса и сбора необходимой информации, затем определяется классификация проблемы, а потом вырабатывается правильная модель решения трудового конфликта.

Ключевые слова: конфликт в производственных отношениях, медиация, решение трудовых споров, суд по трудовым делам, арбитражный суд.

Introduction

Indonesian labor law was previously set about the relation between workers and employers. It was managed in the Third Book of Engagement in *Burgerlijk Wetboek* (BW), Article 1601, Letter A, which stated that labors agreement is the agreement between worker who committed himself under the command of another party order or the employer, for a certain time, to do work and earn wage. Indonesian Labor Law Regulation No 13/2003, Article 1 Paragraph 14, explained that working agreement is the agreement between workers and employers including the working requirements, rights, and obligations of the parties. Labor agreement, mentioned in *Burgerlijk Wetboek*, was defined as the working agreement managed in Labor Law Regulation. It stated that worker or labor is someone who works and earns wage or other remunerations, while employer is someone who gives or provides the work.

Employer or work provider is an individual, an entrepreneur, a legal entity, or other organizations that provide the works and give wage or remunerations. While the company defined as all forms of business, whether it is legalized or not which owned by individuals, partnership, legal entity either private sector or state-owned company, that hires workers and gives wage or remunerations. It also known as social organizations which has management system and hires people by giving them wage

or salary or other remunerations. The relation between parties, the workers and the employers, must obeyed the civil law requirements. This requirement, especially in the relation with agreement, had three principles, those are:

1. Autonomy principle. It is the freedom for all parties to or not to hold the relation and freedom in defining the forms.

2. Trust principle.

3. Causality principle. It is an agreement to achieve goals.

The autonomy of principles has meaning on free parties that hold the agreement based on the civil law and its procedures are not complicated. Autonomy or freedom of contract could also be determined as people freedom in making agreement, deciding the partner contract, the types and the contents of the agreement. Fuady stated that freedom of contract is the freedom of parties in designing and managing the contract as long as it fulfilled the requirements below [4, p. 30]:

a. Comply the requirements as a contract.

b. Unrestricted by the laws.

c. Suitable with prevailing habits.

d. The contract has been applied well.

Trust principle shows that the parties involved in civil connection bind to trust principle so this principle is extremely important for the beginning of civil connection. It is important because someone, who makes agreement with another party, creates trust among them and meets their agreement. In other words, they are reaching the achievement in the future. However, without trust, the agreement will be impossible to apply by both of the parties. The trust will be the knot both of the parties and it has got a power that binds them as the law. Meanwhile, the causality principle shows that agreement made by the parties is a medium that places rights and obligations in order to reach the goal of that agreement. The validity of the cooperation agreement is similar to the validity of agreement managed in article 1320 BW: 1) they agree to bind themselves; 2) ability to create the boundary; 3) certain matters; 4) the right cause.

In brief, the explanations are:

1. Agreed

It means the employer and the worker make agreement to satisfy the employer's needs and vice versa. Whenever there is enforcement, then the agreement is canceled. Article 1321 BW stated: the agreement is not valid, if it is obtained by enforcement and deception. In order to avoid mistake, there is additional statement that said "Agreement is made and signed by each party in healthy physical and mental condition". The definition of enforcement has been clearly informed in article 1323, 1324 and 1325 BW as followed:

– The enforcement done by the agreement maker is the basic reason to abate the agreement. Likewise, it is done by the third party for complying a certain party's importance.

– The enforcement happened when the action frightens someone with healthy mind and this person feels threatened because of it.

– The enforcement also calls the agreement off when it is happened towards husband, or wife, or children, or family with their relation line either up or down.

2. Competence

The parties involved in the agreement must be qualified according to the law. It means, the law claims that the parties are adults and mature. Article 1330 BW managed that people who are not qualified to make agreement are:

– They who are not mature.

– They who are under the law suit.

– Wife without husband's permit.

– Also common people who are not allowed by the law to make agreement.

3. Certain thing

It means something which has got a clear object. Both parties has known clearly the object, either the employer or the workers

4. Acceptable causes

This is the work that is allowed and it does not break not only the law but also obscenity and public order. Besides that, the company where the workers work for must have and get legal permit for the operational activities.

This forbidden thing, according to article 1337, is something which is banned by the law or against the public order.

The company and the workers until now have differences aims in their effort. The company wants the maximal production and then the workers want the maximal wages. The differences goal potential makes a conflict between them. Government intervention is to solve the problem with the existence of mediator from Man Power Department. If there is conflict happened in industrial relation, then the steps to deal with it could be seen below:

a. Step one, bipartite meeting happened.

b. Step two, if bipartite meeting fail or cannot get deal anymore, the parties report this dispute to man power department. Meanwhile, if bipartite meeting success, the result of bipartite meeting written as collective agreement and will register at Industrial Court.

c. Step three, if bipartite meeting fail or cannot get deal anymore, and the parties already report this dispute to man power department. According to the regulation, the officer offers the parties to choose arbitration or conciliator. If the parties have no choice, they must go to the mediation.

d. Step four, the mediation fail, the parties go to the Industrial Court to make trial.

Therefore, the main issue in this article was aimed to find the ideal mode to solve the dispute in industrial relation.

Research method

The method used in this article was socio legal research, with detailed analysis steps as below:

1. Processing to finding the rule, the regulation, principle and doctrine related with the settlement of industrial relation conflict.

2. Collecting the results of the implementation of the legislation.

3. Collecting the problem from the process.

4. Sorting the problem and then will make the model for solution of industrial relation dispute.

Result and discussion

Industrial relation in sociale rechtsstaat

In juridical concept, Donner stated that the term of *sociale rechtsstaat* is better than *welvaartsstaat* [5, p. 72]. Couwenberg said that *social rechtsstaat* is a variant of *liberal democratische rechtsstaat*. These variants are: new interpretation towards classical rights and social rights domination, new concept of political power in relation to economic power, new concept of public importance, new character of "*wet*" and "*wetgeving*" [5, p. 73]. In details, Djatmiati proposed her opinion as stated below [3, p.104]:

Sociale Rechtsstaat concept is another form of *liberal democratische rechtsstaat* with some changes such as:

Formal component from rechtsstaat idea that gets material component (so it is formal and material). Formal component connects to classic freedom rights, and material component provides social rights, these rights require active action from government that has got certain power towards the administration law [2, p.17].

Freedom and equality (*vrijheid en gelijkheid*) which firstly included into *liberale democratisc herechtsstaat* concept that has got formal juridical character, while in *sociale rechtsstaat* concept, it is considered as the fact in society life (*reele maatschappelijke gelijkheid*), and that there is no absolute equality among the individuals in the society. Social rights, economy, and cultural get the main priority. For instance, in the new *Grondwet Netherland* (1983) not only classic rights but also social rights managed specially, such as the connection between housing problems and healthy environment (article 21), public health (article 22 paragraph 1).

The legitimation of political power is no longer the main problem, however, the economy power in capitalist people that is liberal and the connection between economy power and political power is the one. Public importance as the basic of public law principle, is not meant as the country importance, power that keep public order or the importance of the bourgeois people as the basic of society in liberal law country: public importance is the importance of "*gedemocratiseer denationalestaat, waarvan het hele volk in al zijngele din gendeeliutmaak*".

The characters of the law (in democratic liberal concept) which are "*restrictive, confirmed*, and *stabiliserend*" have been reduced because of the wetgeving function is only as "*formeel juridische basis van een social georenteerdo verheidsbeleid*". Therefore, the laws with "*ratio scripta*" character, is changed into "*eenjuridis instrument terrealisering van ditbeleid*".

Through the changes mentioned above, main factors of "*sociale rechtsstaat*" are: *elementairrecht, economisch emogelijkheden, sociale spreiding*. They are connected to the law protection for people towards the government action, in *sociale rechtsstaat*, the law protection principle is used for the protection of social rights, economy rights, and cultural rights.

Connecting to the rights character (in *rechts staat* that is liberal and democratic), "*the rights to do*" in *socilae rechtsstaat* creates "*the rights to receive*". Connecting to the law protection means, the more complex law protection system for people, the more means needed in order realize people rights protection, particularly social rights, economy rights, and cultural rights.

Supriyanto stated that the change of labor law in Indonesia from private law to public law was caused by some factors [7, p. 87], for instance:

a. The existence of law development in the world that also affected our country, which Indonesian Government involves into people lives, including in labor by applying some limits toward individual freedom as stated in various rules and laws about labor. It is called "socialisering" process.

b. Government points out, that labor in Indonesia is a part of people importance and public order. As the result, labor matters in Indonesia is not only referred to labors and employers but also becomes part of people importance so government must involve in it by issuing some rules and law.

The change of labor law character from private law into public law can be legally accepted based on: a). The state theory points out, that Indonesia is one of the welfare-country (*welfare state*) which requires an active role to realize public welfare and social justice, and b). Labor is the part essential structure in Indonesian society, so the rule that manage labor matters is public law [7, p. 88].

Government intervention toward industrial relation

Henkin wrote in "*The rights of man today*": "… Human rights are claims asserted recognized as of right, not claim upon love or grace, or brotherhood or charity: one does not have to earn or deserve them. They are not merely aspirations or moral assertions but increasingly, legal claims under some applicable law" [as cited in: 5, p. 34-35].

Limitless freedom trigger conflicts, therefore law are needed as the limit. According to Friedman Law has power to regulate the attitude [5, p. 102]. However this power is determined by 3 main factors such as: sanctions, social pressure, cultural values (awareness and faith, legitimacy concept). Those components are not only reacting one to another but also interacting.

Talking about the function of code of conduct for law (*de rechtsorder*), there are 5 functions of code of conduct for law:

1. To settle conflicts (reactie functie).
2. To regulate community law and order (ordenings functie).
3. To engineer (inrichtings functie).
4. To distribute rare things in community life (regelins en plannings functie).
5. To control and supervise (controle functie) [3, p. 50].

Conducting affairs of Government is seen in day to day life, or as regulated by law. Therefore the task of government is large. Task in governance not only as task in small scope, that is, implementing law but also as big scope task which covers governance in small scope task and tasks in making laws regulation. Meanwhile, the meaning of mediator by Christopher is was a *mediator is a third party, people generally who are not directly involved in the dispute or substantive issues in the question* [1, p. 15]. Mediator also had various roles in the parties, such as; (a) the opener of communication channels who initiates to establish communication or facilitates has better communication, if the parties are already negotiating, (b) to test the legitimacy of the parties and help all parties recognize the right of others to be involved in negotiations, (c) the process facilitator who provides a procedure and often formally chairs the negotiation session, (d) the trainer, who educates novice,

unskilled or unprepared negotiators in the bargaining process, (e) the resource expander who offers procedural assistance to the parties and links them to outside experts and resources that may enable them to enlarge acceptable settlement options, (f) the problem explorer, who enables people in dispute to examine a problem from a variety of viewpoints, assist in defining basic issues and interests, and looks for mutually acceptable options, (g) the agent of reality, who helps build a reasonable and realistic settlement and questions and challenges parties who have extreme and unrealistic goals, (h) the scope goal, who may take some of the responsibility or blame for an unpopular decision that the parties are nevertheless willing to accept. This enables them to maintain their integrity and when appropriate, gain the support of their constituents, (i) the leader, who takes the initiative to move the negotiations forward by procedural – or on occasion, substantive suggestions [1, p. 19].

Intervention which could be done by mediator are; (a) the moves of the other parties; (b) their standards of behavior; (c) their styles; (d) their perceptiveness and skill; (e) their needs and preferences; (f) their determination; (g) the quantity of information that the negotiator had about the conflict; (h) the negotiator's personal attributes; (j) available resources [1, p. 59].

The discussion about mediator in solving the industrial connection dispute, relates to rights, justice, and state intervention. The Government plays a role in Dispute Settlement of Labor (now it called Dispute Settlement of Industrial Relations). It is stated in:

a. Act No 4 Year 2004, Article 4, paragraph 3 about Dispute Settlement of Industrial Relations. After receiving a written report from one or both parties, the local authorized manpower offices is required to offer to both parties a Collective Agreement to select a settlement through conciliation or arbitration.

b. Act No 4 Year 2004, Article 4, Paragraph 4 about Dispute Settlement of Industrial Relations. In the event the parties do not select settlement through conciliation or arbitration within 7 working days, then the authorized manpower offices will transfer settlement of the dispute to a mediator.

The role of government stated in Act No 4 Year 2004, Article 4, paragraph 3 and paragraph 4 about Dispute Settlement of Industrial Relations are:

1. To offer to select a settlement through conciliation or arbitration.

2. If the parties do not select settlement through conciliation or arbitration, the government in this case the authorized manpower office will transfer settlement of the dispute to mediation.

Model of resolution on industrial relation dispute

The workers require short and rapid process to handling their case. The conflict about industrial relation makes the situation and condition in factory not conducive. By the system that stated in regulation, the worker think that it is take a long time to archive the end of conflict. The problems in implementation are:

1. Too many processes that have undertaken, including bipartite meeting, report to man power department, choose the arbitration or conciliator, if have no choice, the parties must go to mediation way, if the mediation fails, the parties must go to Industrial Court.

2. The time to end conflict is very long, such as the bipartite meeting had time duration until 30 days, reporting to man power department for about 2 until 3 weeks. The duration flexible from reporting to do a meeting for chooses the arbitration or conciliator ways. Choosing the arbitration or conciliator had flexible duration within 2 weeks, the mediation way had duration until 30 days, and if the mediation fails, the parties must go to Industrial Court with flexible duration from 50 days until 5 months. The duration for achieve the end of conflict is so long, near one years.

Actually the length of the process causes a lot of problems, such as stop production in factory. If the negotiation between worker and company are fail and difficult to achieve solution, the workers have right to demonstration or strike. At that time, the condition is not good for both of them, for workers and for company. That are causes damages, losing in production, losing in income and the worst possibility is potential anarchy if there is a physically conflict between the workers and company.

In the other companies also conduct lockout even though according regulation the company should not be made in reply to strike. The company can conduct lock out because of worry if the strike was happened, some production disorder, some product damage, or might occurred an explosion or other harmful.

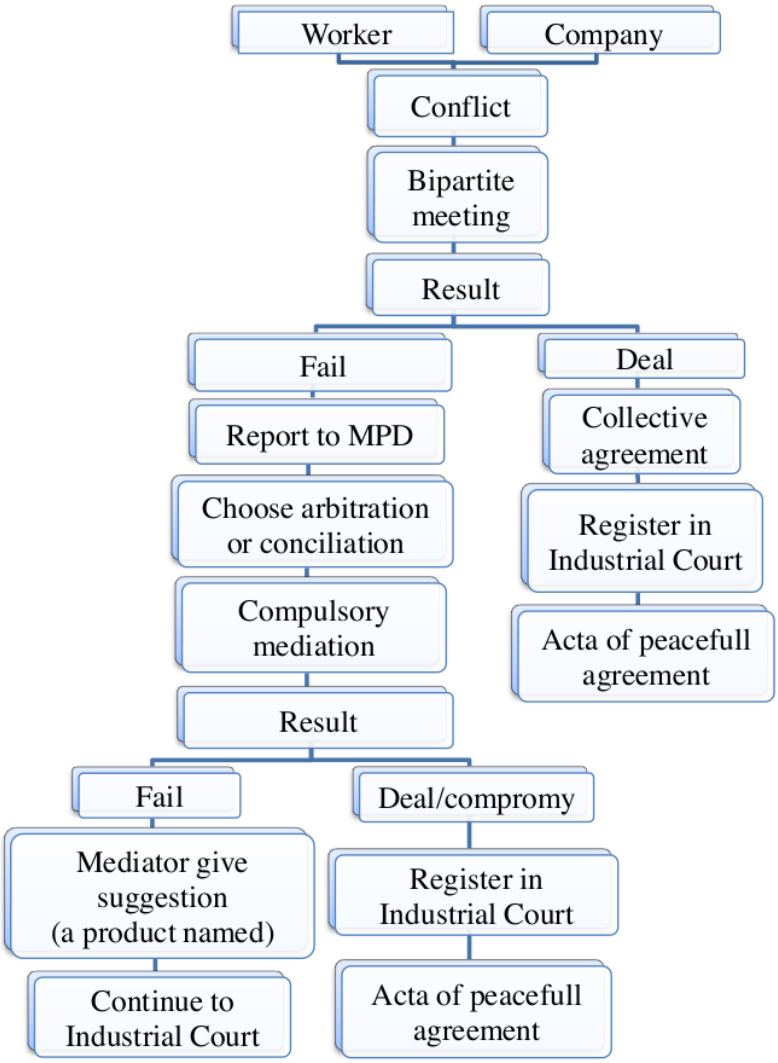
There are conditions that happen when the process takes a long time. A simple way to solve industrial relation dispute is needed better than the process in Man Power Department, since: a) the conflict is private that means the conflict related by the workers and the company, b) involvement the mediator in the conflict just showing that government responsible to citizen, c) by get the process in man power department make the conflict take a long time to achieve the solution, d) mediation in Man Power Department not necessary because this process is duplication with the trial process in Industrial Court.

In Industrial Court, the first step is offers mediation for both of them to get best solution with peacefully [6, p.54]. This is important things based on article 130 HIR (*Herziene Inlandsch Reglement*) and 154 RBG (*Rechtsreglement Buitengewesten*), thus the mediation in Man Power Department is waste and duplication with the mediation in Industrial Court.

The flowchart if dispute happened:

Figure 1.

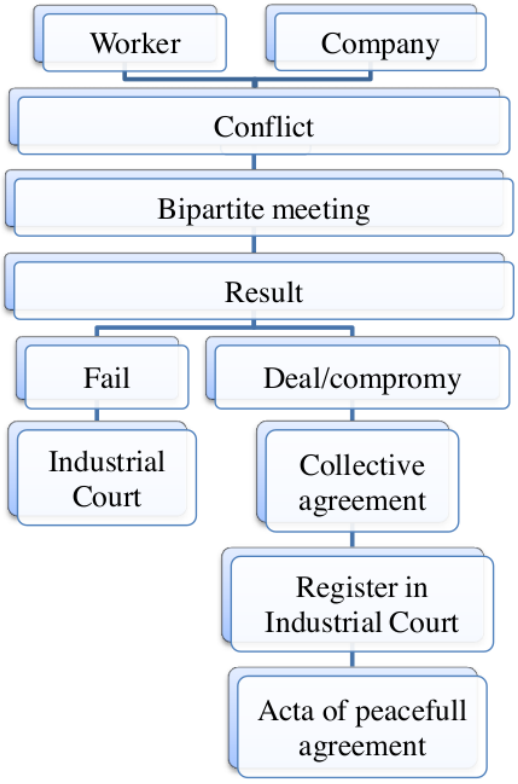
Dispute Flowchart



The simple and fast settlement model for industrial relation disputes as an ideal mode in resolution of industrial relation dispute is:

Figure 2.

Industrial Resolution on Dispute Relation



Conclusion

The step and process to solve the industrial relation dispute was too complicated and took a long time. Completion with long time (duration) and long stages cause worry of investors who will in Indonesia. Hence, the government fails to regulate the employment situation in Indonesia. In fact, Indonesia is ranked among the 11 highest competitive countries in Asia Pacific, after Singapore, Japan, Hong Kong, New Zealand, China Taipei, Australia, Malaysia, South Korea, China, and Thailand. Indonesia is unable to compete with China because of bureaucratic and political issues believed to be one of the main causes of high cost economy. Indonesia's weaknesses in terms of employment are: low competence, low education quality, infrastructure and rigid employment arrangement.

Recommendation

To make short the time and make easier the process is very helpful for the worker and company if there is a dispute in industrial relation.

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