

Flexibility Management to Solve Industrial Relation Dispute

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Submission date: 18-May-2021 02:37PM (UTC+0800)

Submission ID: 1588606907

File name: Flexibility_management_to_Solve_industrial_relation_dispute.pdf (381.67K)

Word count: 2340

Character count: 12521

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Keywords: Worker, Employer, Dispute, Flexibility Management, Model.

Abstract: In recent situation, the dispute of industrial relation among the workers and the employers, these are a lot going on. Those were happened because of: 1) the amount of the workers more than amount of chance to work for workers; 2) the modernization thrive, so that the factory no needed more worker to do in their factory. Now production depend on electricity, depend on machine, depend on computer. 3) The machine, the computer more clever than human. 4) The regulation sometimes less able to keep up with the time. Initially a dispute in industrial relation had regulated by act number 22 year 1957. At this regulation there were two kinds dispute. There were dispute of right and dispute of interest (we called it *as perselisihan hak dan perselisihan kepentingan*). The dispute of right related with dispute that arise because of one of the parties not fulfilled requirement or item / items of contract or collective labour agreement. The dispute of interest means of the effort to chance the requirement on labour condition from the workers to the employers. The stressing is on contradiction among workers versus employers related the disagree about labour requirement or labour condition. Now, dispute in industrial relation regulated by act number 2 years 2004. At this regulation we know about 4 (fourth) kinds disputes: 1) Dispute of right. 2) Dispute of interest. 3) Dispute of termination. 4) Dispute among union worker. To face the complexitas of industrial relation dispute solution, we should have the new paradigm to solve the dispute. We need flexibility management to solve the problem in industrial relation. State of problem : that the flexibility management with the local wisdom is a good model to solve the industrial relation dispute?

1 INTRODUCTION

Most of the workers need a contract for certain¹ of their position, their rights and their obligations. The essence of contract is that there should be an agreement. The parties in one contract must first reach an agreement. To have an agreement, there should be an offer by one party which is accepted by the other party (Catherine and Tang, 1997). The worker's status is necessary to ascertain which provisions apply to them. There are several employment statuses in Indonesia: among others: Permanent workers, temporary workers, outsourcing workers, daily work². In other countries there is a difference between employee, worker, independent contractor. Employees are entitled to the full suite of common law and statutory employment rights. Workers and certain categories of self-employed persons / independent contractors enjoy varying degrees of limited employment rights (David, 2016). In a state which is subject to the common law legal system, the determination of status is very useful for

determining decisions in case of cases to be resolved through the courts. It is not justified for the same case with the same employment status, decided by a very different verdict. Hugh Collins in Simon and John (2012):

It would clearly be unrealistic to expect the courts to take a totally policy-oriented, differing in each case.⁶

In Australia, this country has placed its faith in the techniques of conciliation and arbitration as the principal means of dealing with industrial disputes (Breen and Andrew, 2004) In the Netherlands known mediation settlement in the conflict (disputes) labor. Mediators deal with: individual cases, in group's cases or among union's cases. *Als een mediator wordt ingeschakeld om in een arbeidsconflict te bemiddelen dan dienst hij te weten op welk niveau van een organisatie de problematiek die aan hem wordt voorgelegd, is het een conflict tussen bijvoorbeeld individuen, binnen een team of op organisatieniveau* (van de Griendt and Schtte, 2009).

2 METHODS

This research is applicable in terms of the purposive random sampling.

- Research Subject: The subjects of study consist of the workers, the employers, the union worker in Surabaya, Mojokerto, Pasuruan and Sidoarjo. There are many variations in the matters of the workers concerning their contracts.
- Settings: Related the locations that many factory at there and they are have the central of industry like: *PIER* (Pasuruan Industrial Estate Rembang), *SIER* (Surabaya Industrial Estate Rungkut), *Ngoro Industrial Park* (Mojokerto), *SiRIE* (Sidoarjo Rangkah Industrial Estate).
- Procedures: The study used in depth interview, with questioners besides literature research. Some questions stated at questioners papers. About: the matter of dispute, how to solve the problem (by personal or by union worker and what kind of the way to solve) and what the result.
- Data Collection: The data from questionnaires, from in depth interviews used for determine what kind of solution to make the flexible one.

2.1 Research Tools

The matter of dispute, how to solve the problem (by personal or by union worker and what kind of the way to solve) and what the result. This questionnaire was compiled for the matter of dispute, how to solve the problem (by personal or by union worker and what kind of the way to solve) and what the result. It was a self-made questionnaire containing information on sex of worker, education, the kind of dispute and the model of resolution for workers.

2.2 Research Conducting Methods

At first, we elaborate about industrial relation dispute among the worker and employer. Analyse about the matter and the ways to solve it (based on regulation and based not by regulation)

In this research, data analysis was performed not by statistic form or statistic model but by analyse in sosio-legal model. This research got data in some locations, some workers and some factories.

For this research we use some questionnaire, but we completed it by in depth interview. The questionnaire for the workers contain of:

- Age;

- Sex;
- Education;
- Job;
- How long as a worker;
- The status in the factory;
- Never or ever has a problem at factory;
- What kinds of problems;
- How to solve the problem (by regulation or not by the regulation) ;
- The result?

3 FINDINGS

3.1 Strike Resolution

Ordinarily, strike action (which is the total withdrawal of labour) results in a fundamental breach of an employment contract (Charles, 2000). Strike is a basic right of workers as a reflection of the constitution of the Republic of Indonesia 1945 Article 28 E Paragraph (3): Everyone has the right to freedom of association, assembly and expression. Thus the Constitution provides guarantees for expressing opinions including strikes (Muhammad, 2016).

Based on strike or demonstration statistics, 150 thousand people march in May Day 2017. About strikes, there is no definitive data because the strike is done inside the factory so it is more internal, not detected from the outside, not influence to community.

According the worker, strikes are a last effort after the struggle over non-fulfillment of rights or disputes takes place. In handling problems that occur in companies based on Act No. 2 of 2004 on Industrial Relations Dispute Settlement Act are:

- Completed bipartite settled between workers and employers;
- If the dispute could not be completed at the company level, then resolved through employees in the local manpower office;
- If the dispute still could not be resolved by employees in the labor service then the parties are asked to choose arbitration or conciliation settlement;
- If the parties do not choose for arbitration or conciliation then this dispute shall be settled through mediation in accordance with applicable law;
- If the agreement has not reached, the dispute should be settled through the industrial relations court.

According to the workers, the solution by the steps of regulation takes a long time and is not flexible. Solution by law by court makes the parties become an enemy. The workers want the flexible management to fulfill their need and their dispute solutions.

According to the employer, solution by court decision more gives benefit and certainty for them.

According to the union worker, many cases finished by the court decision. It's more satisfied for the union worker. In the other hand, not all workers joint with union worker.

3.2 Strike: Best Practice or Versus Local Wisdom?

If both parties have no solution or have no agreement for the dispute, the strike would conduct. To minimize the existence of industrial relations disputes and strike then that needs to be considered is the ability to communicate both parties. The next revolution in technology is going to be much more about focusing on the human dimension, making technology easier for people to use.

Communication deadlock is central to the problem. Whereas in fact there is a flexible management model through Bipartite Cooperation Institutions (*Lembaga Kerja Sama Bipartit / LKS Bipartit*) that could be a medium for prevention of disputes. With the activeness of the both parties in the Bipartite Cooperation Institution (*Lembaga Kerja Sama Bipartit / LKS Bipartit*), it is counterproductive to the presence of strikes activity.

On the other hand entrepreneurs prefer case handling ways compared to doing preventive steps in the organizational mechanism of the company. This is because not all management understands well how to manage risk management in industrial relations so they taken a choices to solve problems, not how to prevent problems.

According to the worker, the steps to solve the problem take too long time. From bipartit until the final decision could be take one and a half year. It's pays suffering to the workers despite the provision of payment of wage proceeds as long as the worker has not yet determined the termination of their employment in the industrial relations court but the wage payment of this process is often depend on the condition that there is an industrial relations court decision

According to the employer, solve the industrial relation dispute is more polite than use the strike. If there is the strike strategy to solve the problems, usually make the employer angrier and the process like a war between worker and the employer.

According to the union worker, the strike is the best choice to solve the problem, if there is deadlock situation. In union worker viewing, the employer could be fulfilled the claim if there's no choice anymore.

3.3 The Gate of Peace

Basically this dynamic industrial relations follow the existing developments in society. The modern ways of resolving industrial relations disputes have been used.

People are increasingly aware of the law, acts and regulations are well established in accordance with the laws and regulations that existing before, following the hierarchy of law, not contradictory to the law and follow international provisions that we ratify frequently.

But we cannot deny the local wisdom is very influential. Local wisdom as ideas, values, local views, wise, good value, embedded and followed by members of the community. Local wisdom also define as part of the culture of a society that could not be separated from the language of society itself.

The topics of disagreement that caused to the strike are:

- Collective labor agreement;
- Review the labor law;
- Industrial relationship;
- Social security;
- Payment or salary.

Until now strike usually chosen despite the strike not reflection the deadlock.

The points could led to the failure of the negotiations that could be strike, among others:

- Lack of awareness attitude from the mediator;
- Lack of openness from the parties;
- The Mediator only focus on suggestions;
- The Mediator is not competent to solve the problem;
- There have no minimum standards of mediation process.

For further, we should arising again the flexibility management with local wisdom like: "*musyawarah untuk mufakat*" as the good choice for innovation problem solving.

By using the flexibility management with local wisdom means we build the gate of peace in industrial relationship.

4 CONCLUSIONS

After got research about the solution of industrial relation dispute, we knew that:

- There are 4 (four) kinds disputes in industrial relations, such as : dispute of rights, dispute of interest, dispute of termination (dismissal) and dispute among union worker;
- There are many step to solve the dispute according the act no 2 year 2004;
- There are take a long time to reach the final decision for the dispute;
- If there no smooth ways by bipartite, tripartite, choose the conciliation or arbitration and the go to mediation ways, they or the parties try to solve by court. By industrial relationship court and we called "*pengadilan hubungan industrial.*";
- There is possibility the workers by union worker use the strike action to end the dispute.

According the workers, they need simple treatment to solve the industrial relation dispute that take not long time and not expensive cost.

According the employers, they better handling case compared with prevention ways by *Lembaga Kerjasama Bipartit* (LKS Bipartit).

According the union worker, employer's action should be against with the firm action such as strike or demonstration.

Finally, according all parties, the flexible management by "*musyawarah untuk mufakat*" is the best model to solve the industrial relation problem.

For further better we use the flexibility management by local wisdom that we called "*musyawarah untuk mufakat*" to solve the problem. The workers, the union worker, the employer and the officer from local man power office or mediator should be understand, have awareness that ways

H.F.M. van de Griendt & E.Schtte, *Mediation in Arbeidsconflicten*, Nederlands Mediation Institute, 2009, P.17.

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