

BUILDING RELATION SYSTEMS RELATIONSHIPS INDUSTRIAL THAT IS ENTERPRISE

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ABSTRACT

Establishing an industrial relations court system has many dimensions and links to the interests of employers, governments and communities. One of the functions of the Industrial Relations Court is for the settlement of industrial relations disputes resulting from the multitude of conflicting interests. Problems in research as follows: (1) How is the implementation of industrial relations dispute settlement through the Industrial Relations Court? (2) How to build an authoritative Industrial Dispute Court system? The research method used is socio legal research, the research that sees the legal phenomena associated with problems that occur in the community in the implementation of industrial relations dispute settlement through Industrial Relations Court in accordance with Law No. 2 of 2004 on Industrial Relations Dispute Settlement. The results show that the implementation of industrial relations dispute settlement through Industrial Relations Court is less in accordance with the concept and theory of law in general. The concept of changing industrial relations dispute resolution from legal concept to private law which must be followed by changes in other labor regulations. Associated with these changes, is needed wisdom from the government and legislators. The mechanism of handling cases in a litigation manner through the Industrial Relation Court at the District Court has not been executed quickly, appropriately, fairly and cheaply. This is due to the lack of institutional independence of law, institutional accountability law, human resources in the field of law and the judiciary is not transparent and open. Establishing an authoritative industrial relations judiciary requires various improvements including: a one-stop perfection; developing transparent and accountable judicial management; Judge recruitment; the age limit of the Judge; Career and Non Career Judges; the importance of institutionalization of judicial exams; and strengthen the functions of the Judicial Commission's oversight. In addition, Judges must have integrity and professionalism for the realization of legal justice for the seeker of justice, especially among workers. The question of the sensitivity of industrial relations court judges to labor issues is indispensable for the creation of conditions and support of all stake holders, including the welfare of the judges.

Keywords: System Building, Industrial Relations Court, Authoritative

Introduction

A. Background

The national development shall be carried out in the framework of the complete development of the Indonesian people and the development of the whole Indonesian society in order to realize a prosperous, just, prosperous, equitable society both material and spiritually based on Pancasila and the 1945². Constitution of the State of the Republic of Indonesia. Implementation of national development required the workforce as the perpetrator and the purpose of development. Employment development is needed to improve the quality of the workforce and its participation in the development and improvement of the protection of labor and family in accordance with human dignity and dignity.

Employment development not only involves the establishment of law, but also the inconsistency and inconsistency between labor laws and regulations which often lead to overlapping regulations, this violates the principle of legal certainty³. Labor legislation has many dimensions and interrelationships not only with the interests of the labor force before, during and after work, but also the interests of employers, governments and workers in harmonious industrial relations.

¹ Mashari, *Sekretaris Akademik Program Doktor Ilmu Hukum Fakultas Hukum Universitas 17 Agustus 1945 Semarang*, tanggal 17 Oktober 2017.

² Timboel Siregar, *Selaku Sekjen Organisasi Pekerja Seluruh Indonesia (OPSI)*, Sabtu, tanggal 22 April 2016.

³ Naoyuki Sakumoto, 1999, *Labour Law And Policy In Indonesia, dalam Current Development Of Laws In Indonesia*, Ed. Koesnadi Hardjasoemantri & Naoyuki Sakumoto, Institute Of Developing Economies Japan External Trade Organization, Tokyo, hlm. 123.

Creating harmonious industrial relations between employers and workers is not easy, often triggering industrial relations disputes that result from multiple conflicting interests. Conflicts of interest that occurs when in the conduct or pursue interests someone harms others and in life together conflict is not avoided⁴. The industrial relations, potentially causing differences of opinion, even disputes between the two sides.

Industrial relations disputes in the industrialization era are becoming increasingly complex, multi-faceted with legal aspects, requiring rapid and precise, just and inexpensive institutions and mechanisms for dispute resolution of industrial relations. Industrial relations dispute settlement system is regulated in Law Number 2 Year 2004 concerning Industrial Relations Dispute Settlement in response to differences of opinion which lead to conflict between employers and workers. The disputes include: rights disputes, interest disputes, disputes, and disputes among trade unions within a company.

Based on data from the Directorate General of Industrial Relations Court of Jamsos Ministry of Home Affairs of the Republic of Indonesia, there were 1,554 cases of Termination disputes in 2016, while the dispute case was 1,320 cases. The high case of disputes is certainly a picture of the real conditions of industrial relations that occur today⁵. According to him, the process of settling industrial relations disputes regulated in Law No. 2 of 2004 on Industrial Relations Dispute Settlement, was not able to answer the needs of workers to obtain a fast, precise, fair and cheap settlement process.

The System of Law Number 2 Year 2004 adopted an industrial relations dispute settlement system by granting full authority to the Judiciary. The mechanism of settlement through Bipartite and Mediation beyond the authority of the Judiciary, the product of the process has no binding legal force, unlike the product of the Industrial Relations Court decision and the decision of the Supreme Court which is binding and legally binding for the parties. The proceedings of the trials in the Industrial Relations Court and the Supreme Court are entirely determined by judges, namely career judges and ad hoc judges (from the Union / Labor Union and employer elements).

The practice of litigation in the Industrial Relations Court is a long and tedious and costly legal effort. The condition of the dispute settlement is not in accordance with the character of an industrial relations dispute settlement which is principled to guarantee the settlement of disputes quickly, accurately, fairly, and low cost. The settlement of industrial relations disputes should be a neutral tribunal, which is impartial in that the judges who examine and decide upon an industrial relations dispute case must be persons of the highest degree of morality and integrity. It is interesting to do research by examining the authoritative industrial relations court system.

B. Problem Formulation

Based on the background of the above problem, it can be formulated the problem as follows:

1. How to settle industrial relations disputes in accordance with the industrial relations court system?
2. How to build an authoritative Industrial Dispute Court system?

C. Discussion

1. The independence of Ad-Hoc Judge in the Court of Industrial Relations Corresponding to Law and Doctrine

The appointment and dismissal mechanism of the Ad-Hoc Judge, all of which will affect the independence and professionalism of a Judge, especially for the Ad-Hoc Judge on the Industrial Relations Court, will be based on a description of the constitutional basis, normative grounds and arguments reinforced by doctrine on the opinions of some experts about the independence of judges.

The independence of Judges is needed to improve the system through the operation of the Industrial Relations Court System which is based on legal substance, legal structure, and legal culture. In line with the Friedman concept, the legal system consists of 3 (three) elements, namely elements of substance, structure, and legal culture⁶. The author sees the

⁴ Sudikno Mertokusumo, 1996, *Mengenal Hukum (Suatu Pengantar)*, Liberty, Yogyakarta, hlm. 4.

⁵ Timboel Siregar, *Selaku Sekjen Organisasi Pekerja Seluruh Indonesia (OPSI)*, Sabtu, tanggal 22 April 2016.

⁶ Lawrence M. Friedman, 2001, *American Law An Introduction*, Terjemahan Wishnu Basuki, Tatanusa, Jakarta, hlm. 8.

importance of legal system development in Indonesia on the aspect of substance has been done by forming many norms about the behavior of the people through legislation. In the structural aspect is still weak, because this aspect of structure is the element that will apply and enforce the substance of the law. While on the legal culture aspects of human attitudes toward law and the legal system, including trust, values, thoughts and expectations.

A review of the industrial relations justice system, there are still problems with aspects of the legal structure such as: the lack of institutional independence law, legal institutional accountability, human resources in the field of law and the judicial system are not transparent and open. Discussion of the lack of institutional independence of the law, especially law enforcement agencies also brings great consequences in the legal system. Interventions of judicial power have resulted in partiality in judgment, although this is against the principles of impartiality in the judicial system.

A decision that abandons the principle of impartiality in the long run has contributed to the degadration of public confidence in the legal system as well as the loss of legal certainty. One-roof coaching by the Supreme Court is an attempt to realize the independence of judicial power and create impartial judicial decisions (impartial). In order to support the reform of the legal system and politics, it is necessary to create a just, consistent, and non-discriminatory national legal system. The development of the judicial system by emphasizing the aspects of the legal structure through the judiciary is very important compared to the aspects of substance and culture.

According to Bagir Manan⁷, that Indonesia as a country based on law, in carrying out the goal of the country must act in accordance with the law and can be legally accounted as well. One of the characteristics of the rule of law is the independent power to administer justice in order to enforce laws and justice free from the interference of the authorities. An independent judiciary is one of the pillars to restore democracy or the rule of law.

Furthermore Bagir Manan explained that the independent judicial powers contain some of the basic pillars and purposes as follows:

1. An independent judicial power is necessary to guarantee and protect the interests of the individual.
2. An independent judiciary power is necessary to prevent government organizers from acting arbitrarily and oppressively.
3. An independent judiciary is required to assess the legitimacy of governmental action or a law and the law system so that it can be properly enforced and enforced.
4. The independent judiciary power will only develop in a democratic and egalitarian state⁸.

According to R. Tresna⁹, that based on positive law there are guarantees for good justice, which can be divided into several classes as follows:

- a. The personality of the judge, the necessary qualifications of skills, intelligence and behavior.
- b. The position of the judge, need the terms of appointment and dismissal.
- c. Judge of the court, it is necessary to perform its duties freely.
- d. Procedure of examining the case before the court, need guarantees to be orderly and orderly and open to the public.
- e. Guarantee for the people, to achieve justice and be treated fairly.

The independence of judges is essential to the realization of justice for the justice seekers, especially in industrial relations disputes, where the decisions established by the Panel of Judges of the Industrial Relations Court can have implications for the investment climate and the fate of the workers and their families. Based on the verdict it should be reflecting fairness that can balance between the investment climate and the generally weaker interests of workers.

2. Implementation of Industrial Relations Dispute Settlement In accordance with the Industrial Relations Court System

⁷ Bagir Manan, 2004, *Sistem Peradilan Berwibawa (Suatu Pencarian)*, Mahkamah Agung RI, Jakarta, hlm. 145.

⁸ Bagir Manan, 1999, *Kekuasaan Kehakiman yang Merdeka*, Mimbar Hukum, Nomor 43 Tahun X, hlm..10.

⁹ R. Tresna, 1978, *Peradilan di Indonesia dari Abad ke Abad*, Pradnya Paramita, Jakarta, hlm.143.

The settlement of industrial relations disputes in a litigation manner through the Industrial Relations Court, as regulated in Law Number 2 Year 2004 on Industrial Relations Dispute Settlement is less in line with general legal concepts and theories. This is due to a change in the industrial dispute settlement system from the concept of public law to private law which must be followed by changes in other labor regulations. Associated with these changes, is needed wisdom from the government and legislators.

The handling of cases in a litigation through the Industrial Relation Court at the District Court has not been able to be implemented quickly, appropriately, fairly and cheaply. The findings of the researcher on the handling of the case of Termination of Employment at the Industrial Relations Court at the Semarang District Court in accordance with the provisions of 50 working days have received the verdict from the judge, but the pratiknya the settlement of the case from the first session until the decision took up to 120 working days more. This condition is ironic in the hope of Law Number 2 Year 2004 on Industrial Relations Dispute Settlement that can resolve industrial relations disputes quickly, accurately, fairly and cheaply.

The implementation of the settlement of industrial disputes in litigation has not been able to bring about a rapid, precise, fair and inexpensive industrial dispute settlement, due to the factors described below :

- a. The capacity of ad hoc judges from unions / labor unions and from entrepreneurs, not all of them fully understand the legislation comprehensively.
- b. The problem of the conceptual capability of ad hoc judges, both from the substance of the law and the redaction of language in formulating a verdict that is completely based on the principle of law and justice.
- c. The integrity of career judges, caused by the mentality factor due to the temptation of others, to become "bad habits" in handling cases and ultimately can reduce integrity.
- d. The availability of the Industrial Relations Court budget and the vagueness of the utilization, there is no *good government* for the continuity of the Industrial Relations Court.
- e. There is intimidation from businessmen against witnesses who are called by judges to witness in the court of Industrial Relations Court.
- f. The slow completion of the case in the Supreme Court, due to the large number of cases entered and handled in the Supreme Court so that it must wait until the verdict fell for 1 (one) year more.

According to Surya Tjandra that the Industrial Relations Court as an existing dispute settlement institution in Indonesia is now required not only to be fair in making decisions, but also to be sensitive to the issue of workers, as the weakest party in labor relations. Character of labor dislocation, the longer a case is over, the more unfair it is for the workers of the judgment to be produced.

According to Researchers that justice through professionalism of judges is expected to be achieved, namely the realization of legal justice for the seeker of justice, especially among workers. Justice is one of the goals of the law in addition to the truth. The question of the sensitivity of the judges of the Industrial Relations Court to the issue of workers is indispensable. The issue is that the sensitivity does not grow automatically and simply, but it is necessary to create conditions and support of all stakeholders, including the state in giving welfare concerns to judges.

The judge is central to the problem because it determines the win and the defeat of a disputed matter¹⁰. Through the judge's decision the problem can be resolved and with the decision the problem can be more tapered. A judge must have the qualities of trusting and cautious to God Almighty, just, wise, virtuous, and honest. A judge should dare to die, just as Supreme Justice Safruddin would not accept bribes in order to uphold the dignity of the law in the eyes of the people and before God. The judge who does not want to uphold the truth is a judge who does not have a moral attitude, a morally depraved judge.

In performing his duties, the Judge has the freedom to exercise judicial authority is not absolute, in upholding justice based on Pancasila by interpreting and searching for the foundations and principles upon which the case is dealt, so that his decisions reflect the feeling of justice of the nation and the people Indonesia¹¹. Under the provisions of Article 18 of

¹⁰ Sholeh So'an, 2004, *Moral Penegak Hukum di Indonesia (Pengacara, Hakim, Polisi, Jaksa) dalam Pandangan Islam*, Cetakan I, Penerbit Agung Ilmu, Bandung, hlm. 130.

¹¹ Sudikno Mertokusumo, 1998, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, hlm. 92.

Law Number 48 Year 2009, that judicial power is exercised by a Supreme Court and the lower courts within the general judiciary, the jurisdiction of the judiciary, the military court environment, the administrative court of the state, and by a Tribunal Constitution.

In the general court environment, there are specializations in the form of Traffic Court, Juvenile Court, Economic Court, Commercial Court, Human Rights Court, and Industrial Relations Court. The Industrial Relations Court is a special court within the general court of justice as referred to in Article 55 of Law Number 2 Year 2004. The authority of the Industrial Relations Court is the absolute authority or absolute competence of the Industrial Relations Court as mentioned in Article 56 of Law Number 2 In 2004, the Industrial Relations Court was in charge and authorized to examine and decide upon:

- a. In the first level of rights disputes.
- b. At the first and final level of interest disputes.
- c. At the first level on termination disputes.
- d. At the first and final level of disputes between unions / labor unions within a company.

A rights dispute is a normative dispute set out in a work agreement, collective labor agreement, company regulation, or statutory regulation, the settlement is not granted to conciliation or arbitration, but before being submitted to the Industrial Relations Court prior to mediation. Whereas a conflict of interest is a dispute arising out of differences of opinion or interest concerning the employment situation which has not been stipulated in the employment agreement, collective labor agreements, company regulations, or laws and regulations. This dispute of interest at the first and final level was decided by the Industrial Relations Court at the General Courts (not appealed to the Supreme Court), this is intended to ensure a prompt, appropriate, fair and inexpensive settlement.

The Industrial Relations Court is established in the District Court and to the Supreme Court authorized to examine, hear, and giving a decision on any industrial relations dispute settlement. Establishment of the Industrial Relations Court first in the Provincial Capital, then gradually to be established in District Courts located in densely populated districts or municipalities. The structure of the Industrial Relations Court at the District Court consists of Judges, *Ad-hoc* Judges, Young Clerks, and Substitute Registrars.

The establishment of the Supreme Court and the appointment of Supreme Court Justices, Supreme Court Justices *Ad-hoc*, and Registrar. The Chief Justice is a Supreme Court Justice assigned to the Supreme Court. *Ad-hoc* Supreme Court Justice was appointed and dismissed by the President on the proposal of trade unions and employers' associations through the Supreme Court and the Minister. This is the same as the Ad-hoc Judge, Ad-hoc Supreme Court Justices are elected for a term of 5 (five) years and can be extended for a maximum of one period. *Ad-hoc* Supreme Court Justice may not concurrently serve as a member of a state high institution, regional head, lawyer, mediator, conciliator or arbitrator.

Appointment of a career judge at the District Court to examine industrial dispute cases, and dismiss by the Chief Justice of the Supreme Court. The appointment of an *Ad-hoc* Judge is a judge of the Industrial Relations Court, and dismissed by the President on the proposals of trade unions and employers' organizations through the Chief Justice of the Supreme Court and the Minister. In each District Court, 5 (five) Ad-hoc Judges represent union elements and 5 (five) represent the entrepreneur association elements. Ad-hoc Judge is appointed for a term of 5 (five) years and may be re-appointed a maximum of 1 (one) term of office. Ad-hoc judges may not concurrently serve as members of the highest and highest institutions of the country, regional head, lawyer, mediator, conciliator, arbitrator. The President of the District Court oversees the performance of judges, *Ad-hoc* judges, young clerks and replacement young clerks.

According to Iskandar Kamil¹², when viewed from the formulation of the articles of Law Number 2 Year 2004 regarding the appointment and dismissal of Ad-hoc Judges in relation to the role of trade unions and employers' organizations. Furthermore, both organizations only "propose", and there is no formulation that an *Ad-hoc* Judge is a representative of a trade union or employers' organization representing the interests of the proposing party.

¹² Iskandar Kamil, 2004, *Kode Etik Profesi Hakim, Pedoman Perilaku Hakim (Code of Conduct)*, Kode Etik Hakim dan Makalah Berkaitan, Jakarta, Mahkamah Agung Republik Indonesia.

The judgment of a judge must take sides and be in the corridor of the law. While justice is an implication of the existence of law enforcement. A judge in performing his duties should not be discriminatory, float in feelings/emotions. In law enforcement means automatically upholding justice, because the very essence of the law is justice¹³. An authoritative judge in deciding a case must be strictly based on the principle of "By Justice by the One Supreme God", not a political interest¹⁴.

3. Building an Authoritative Industrial Relations Dispute Courts System

The authority of the Industrial Relations Court at the District Court in the settlement of industrial relations disputes as regulated in Law Number 2 Year 2004 on Industrial Relations Dispute Settlement still has many weaknesses in the settlement disputes in litigation. Such conditions require a comprehensive effort to develop an authoritative industrial relations system in a litigation manner through the Industrial Relations Court to address industrial relations disputes and find solutions.

According to Surya Tjandra¹⁵, that the legal process does not stop with the passing of a law that regulates certain things. The instrumental aspect of the law requires enforcement, formal examination and settlement processes in the event of a dispute. For example, the implementation of state supervisory functions related to labor issues that tend to be emphasized not on punishment (penal), but rather on the role of conciliation of legislation, as a means of realizing the so-called industrial peace.

According to T. Gayus Lumbuun¹⁶ systematically and comprehensively in establishing an authoritative industrial relations court, namely:

1. One Roof System Enhancement.
One important agenda that supports the independence of judicial power is the "one roof" policy. This policy diverts the administrative technical matters of judicial power from the Ministry of Justice which is part of the executive to the Supreme Court itself which is under the jurisdiction of its own.
2. Developing a Transparent and Accountable Judicial System. Transparent and accountable judiciary management must be initiated from the organization that is able to present itself in the perspective of revamping the independence or independence of judicial power, whether institutional independence, as well as the independence of individual judges, judges at the District Court level to the Supreme Court Justices of the Supreme Court.
3. Recruitment of Judges.
A Judge recruitment is very important and strategic. In addition to the transparent but the most substantive and comprehensive mechanism of judges are the conditions for becoming a judge should be strengthened.
4. Retirement Age Limit Judge.
The age limit of the Supreme Court Justices as well as for Judges at the District Court and High Court level. The reduction of the retirement age limit is intended for regeneration of judges, also related to the productivity of judges influenced by age and health factors.
5. Career and Non Career Judges.

¹³ Muchsin, 2005, *Keadilan Dalam Penyelesaian Perselisihan Hubungan Industrial (Kajian Filosofis)*, Makalah pada Pelatihan Teknis Hakim Peradilan Umum tentang Perselisihan Hubungan Industrial, Jakarta, 26 Agustus 2005, hlm. 6.

¹⁴ Didi Irawadi Syamsuddin, *Kekuasaan Kehakiman Hakim Agung Jadi Benteng Terakhir*, KOMPAS, Senin 12 September 2011, hlm. 2.

¹⁵ Surya Tjandra, 2007, *Praktik Pengadilan Hubungan Industrial: Panduan Bagi Serikat Buruh*, Cetakan I, Penerbit Trade Union Rights Centre (TURC), Jakarta, hlm. x.

¹⁶ T. Gayus Lumbuun, Makalah Seminar "Membangun Sistem Peradilan Yang Bebas Mafia", Diselenggarakan oleh Fakultas Hukum Universitas 17 Agustus 1945 (UNTAG) Semarang, Dalam Rangka Dies Natalis Fakultas Hukum UNTAG Semarang, tanggal 10 September 2016.

In the perspective of strengthening the judiciary, the Non-Career Judge is needed to strengthen the judiciary. Based on the open recruitment pattern and evaluation of the Supreme Court Justice conducted every five years, the dichotomy of career judges and non-careers is no longer relevant.

6. Importance of Institutionalization of Decision Examination.
Examination of a court decision is a form of public control (social control) against a process of law enforcement through the courts. Examination is only one of the forms of supervision within the court, because in addition to the examination there is still another form of oversight both internally and externally as described previously.
7. Strengthen the Judicial Commission's Oversight Function.
It is still felt the relationship between the Supreme Court and the less harmonious Judicial Commission. The author believes that the Supreme Court should accept the existence of the Judicial Commission as a recognized State institution of the Constitution. The existence of the Judicial Commission should not be seen as institutions that disrupt the establishment of the Supreme Court but instead become institutions that can help improve and maintain the image of the Supreme Court and the subordinate courts.

According to the researchers that to create an authoritative judicial system requires the integrity and professionalism of Judges, namely the realization of legal justice for the justice seekers among workers. In addition, the sensitivity of the Industrial Relations Court Judges to the issue of workers is certainly very necessary. The issue of sensitivity does not grow automatically and simply, but it needs the creation of conditions and support of all stakeholders, including the state in giving welfare concerns to judges.

D. Conclusion

Based on the description of the above discussion, it can be concluded as follows:

1. The implementation of industrial relations dispute settlement through Industrial Relations Court is regulated in Law Number 2 of 2004 is still less in accordance with the concept and theory of law in general. The result of the research proves that the handling of industrial relations dispute by the Industrial Relations Court Judge in the Semarang District Court in accordance with the provisions of 50 working days has received a decision from the judge, but in practice it takes up to 120 working days more. This requires the independence of judges to realize justice for the justice seekers, since the verdict set by the Panel of Judges of the Industrial Relations Court can have implications for the investment climate and the fate of the workers and their families.
2. Establishing an authoritative industrial relations court system requires a synergistic judicial system for the performance of law enforcement officers integrated into law enforcement and justice processes. Implementation of the principal values of the judiciary in the performance of judicial duties which include the independence of judicial authority both institutional and functional, integrity and honesty, accountability, responsibility, openness, impartiality and equal treatment before the law, with effective Supreme Court and Judicial Commission supervision, it is ultimately expected to be able to realize a clean and authoritative judiciary.

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