

The Role of Mediator in the Settlement of Industrial Relations Disputes Amid Covid-19 Pandemic

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ABSTRACT

The COVID-19 pandemic has disrupted the economic and health sectors and many obstacles in resolving industrial relations conflicts. One of the ways to resolve the conflict between employers and employees are through the action of mediation. This research aimed to know the role of mediators in resolving industrial relations disputes amid the COVID-19 pandemic and the obstacles faced by the mediators in resolving the industrial relations conflicts between the employees and employers. This research was conducted using normative law method applied through examining library materials as the secondary data. The results of this research assert the role of mediators in resolving industrial relations conflicts and the diversity in the settlements during the pandemic. Obstacles faced by mediators are uncovered as well.

Keywords: *Arbitration Disputes, Mandatory Clause.*

1. INTRODUCTION

A company cannot run alone; therefore, it takes support from workers to assist an entrepreneur in running a company. The statement supports this that an entrepreneur cannot run a company alone in a company. [1]. Employees and employers should work together to achieve the company's goals, that is, to create or produce goods or services to make a profit. The creation of the relationship between employees and employers is an employment relationship. [2]. The employment relationship gives the evidence that person is working for another person or a company with an employment agreement made orally or in writing contains the authority of each between employer and the employee. [3]

Law Number 13 in 2003 regarding Manpower and the State Gazette of Indonesia in 2003 Number 39 of the Supplement to the State Gazette of Indonesia Number 4279 (known in Indonesia by the abbreviation *UUK*) strengthens the position between employees and employers is no longer unequal. This happens because, in the law, the rights and obligations that shall be given to employees by employers and vice versa are prescribed. In the work relation or industrial relation, the employee is obliged to conduct their obligations as an employee by doing the work and obeying company regulations or even work laws, namely a series of regulation that manage all events related to the work of person for another person by receiving wages. [4]

In practice, conflicts between employers and employees are unavoidable. Differences in desires often lead to disputes between them. Employees, are considered contrary to the wishes of entrepreneurs who want to reduce production the costs to get large profits. [5]. These things have given rise to conflicts or disputes. The entrepreneur always wins like the one who has the right to make decisions. There are several sources of conflict; among them are inhumane treatment, limited resources, different goals, poor communication, task interdependence, inappropriate reward systems, and diversity of social systems, personal persons, jurisdictional ambiguity, and organizational differentiation. [6]

Disputes occurring are as Industrial Relations Disputes, which must be resolved to build dynamic and great industrial relations. These things need to be realized optimally between employers and employees and a combination of employers or even employees by the values of *Pancasila*. In the settlement of industrial relations disputes, several ways can be taken as follows:

1. A bipartite negotiation by deliberation and consensus to reach an agreement must be carried out first. Suppose different bipartite dispute resolution cannot be carried out. In that case, the parties may undertake other non-litigation settlements such as mediation, conciliation, or arbitration. [7]. Industrial Relations Mediation, hereinafter referred to as mediation, refers to the settlement of a dispute

over right, a dispute over interest, a dispute over termination of employment, and a dispute among trade union or labor union within one company and the deliberation mediated by one or more neutral conciliators

2. Industrial Relations Conciliation refers to the settlement of the dispute over interest, a dispute over termination of employment, or disputes among trade union or labor union in only one company through deliberation mediated by one or more neutral conciliators.
3. Industrial Relations Arbitration, hereinafter referred to as arbitration, refers to the settlement of a dispute of interest, and a dispute among trade union/labor union in only one company outside the Industrial Relations Court, through a written agreement from the disputing parties to put their dispute resolution to the arbitrator, whose decision is binding on the parties and is final.

At the Manpower Office, the settlement of industrial relations disputes is conducted through the mediation mediated by a mediator.

COVID-19 pandemic having hit the world has also impacted various aspects of individual life in the society, especially in the field of employment. The emergence of the COVID-19 pandemic has affected the performance of employees, company productivity finances also the obligation of employers to put all aspects of the operational cost needs, like the normative rights of employees, including wages. This makes the company to make policies to minimize operational costs incurred through various policies. For instance, conduct production reduction, delay payment of wages to reduce wages, working hour reduction, and layoffs to perform unpaid leave and unilateral termination of employment.

During the pandemic, 1,792,108 million employees in Indonesia were laid off. The figure of 1.79 million employees is based on the data from the Ministry of Manpower of Indonesia, which was updated until May 27th, 2020. [8] Terminating employees, the Indonesian Minister of Manpower, Ida Fauziyah, appealed to companies to do several alternatives and make the termination of employment the last step in dealing with the COVID-19 pandemic.

To prevent more job terminations by employers, the Indonesian Minister of Manpower, Ida Fauziyah, has held dialogue with Apindo and the Trade Unions or Labor Unions regarding the impact of COVID-19 on the working continuity and also anticipating and handling it. To overcome the industrial relations problems between employees and employers because of the COVID-19 pandemic, the Minister of Manpower has also strengthened the role of Industrial Relations Mediator as the third party if the employees and employers do not find an agreement during negotiations.

The role of the Industrial Relations Mediator is significant, considering that harmonious industrial

relations are indispensable for the continuity of business. Harmonious industrial relations is used to improve the productivity and prosperity of the employees and employers. This article will discuss the role of mediators in resolving industrial relations disputes during the COVID-19 and the obstacles faced by mediators in resolving industrial relations disputes between employees and employers.

2. METHOD

The preparation of this article was carried out using normative legal conducted by examining library materials as the secondary data. [9]. The statute approach is applied, namely by searching for the laws and regulations related to the issues to be discussed.

3. RESULT AND DISCUSSION

3.1 *The Role of Mediators in Resolving Industrial Relations Disputes during the COVID-19 Pandemic*

A mediator appointed by the Office of the Manpower and Energy and Mineral Resources Office of the Republic of Indonesia (*ESDM*) of Bali province must fulfill the requirements specified in Decree of the Ministry of Manpower and Transmigration of Indonesia, especially concerning on the points of authority, honesty, fairness, and impeccable behavior, because mediator is in charge of providing options when there is no agreement at the mediation session can be reached.

Before an industrial relations dispute is registered with the Manpower and Energy and Mineral Resources Office of the Province of Bali, the parties must firstly do bipartite negotiation between employees or trade unions and employers to find the solution. The bipartite negotiation can be held for 30 days. However, if one of the parties refuses to negotiate during that period or has conducted negotiations, but cannot reach some agreements, then the negotiations are considered as failure.

Bipartite negotiations that fail may be registered by one or even both parties to the agency that own the authority in the local human resources sector. Bali Province Manpower and *ESDM* Office by attaching evidence to resolve through the bipartite negotiations that have been made. Parties who have been invited to hold the bipartite negotiations, but the second parties are unwilling can give the evidence explaining that they have invited the second party to negotiate. The evidence referred to is in the form of an application for bipartite negotiations. If the evidence is incomplete, the party concerned should be asked to complete the dispute reporting file and give them the time to complete it by the provisions, namely no later than 7 working days from the date of receipt of the return of the file.

The regulation stipulates that the agency in charge of resolving disputes between the company of employee and an entrepreneur, the Manpower and *ESDM* Office of the

Province of Bali - shall offer the parties to resolve their dispute with conciliation and arbitration. Settlement through conciliation is done to settle a dispute of interest, a dispute over termination of employment, or a dispute between trade unions or labor unions. Meanwhile, settlement through arbitration is done to settle disputes of interest and disputes between trade unions or labor unions. However, at the Bali Provincial Manpower and ESDM Office, no settlement model with the conciliation or arbitration has been found despite having previously been offered in the form of choosing to resolve the disputes through mediation conciliation or arbitration. After the parties choose dispute resolution model, the next step is about to mediate.

Before conducting the mediation, the Technical Administration officer records the case in the Mediation Agenda Book, which includes the Complaint Date, Identity of the Complaining Parties, Type of Dispute, and also Dispute Registration Number. This is done after the complaint for recording the dispute.

After receiving the delegation, the Mediator will conduct mediation after having previously researched the problem and the parties concerned. The parties concerned must attend based on the specified schedule by bringing the necessary evidence during the mediation. During the COVID-19 pandemic, the mediation process was halted for a month before it finally reopened but by implementing health protocols, such as wearing masks, washing hands before entering the mediation room, and maintaining a physical distance. There are also restrictions on the number of representatives from the employees, employers, and indorsee who attend the mediation.

The mediator leading the mediation shall be neutral. The mediator will give chance for the parties involved in the dispute to intricate the chronology of the problems that occurred. It then proceeds with conveying the points of the lawsuit filed by the disputing parties. The mediator will also inform the options that can be taken from the statements of both parties to be then handed back to the parties to establish whether or not to agree with the options or choices given. This is usually done when both parties find it difficult to reach an agreement during the mediation session.

If the mediation goes well and an agreed solution is found, then Collective Agreement signed by both parties and witnessed by the Mediator will be drawn up. The signed Collective Agreement will be registered with the Industrial Relations Court at the District Court in the jurisdiction where the parties made the Collective Agreement to obtain a registration certificate. The goal is to order that the agreement is binding, has legal force, and must be implemented by both parties. Suppose the Collective Agreement is not implemented by one of the parties. The party who feels aggrieved shall be able to apply for execution to the Industrial Relations Court at the District Court to obtain an execution determination.

If the mediation session between the two parties does not agree, the Mediator will issue the written recommendation. This written recommendation should be submitted to both parties within no later than 10 working days from the first mediation. This written recommendation will be Collective Agreement when both parties agree to the written recommendation from the Mediator. If one or both parties refuse the written recommendation from the Mediator, the parties shall be permitted to take the matter to the Industrial Relations Court (IRC).

The parties who have received the written recommendation from the Mediator shall have given a written answer to the Mediator no later than 10 (ten) days from the receipt of the written recommendation. The answer consists of the approval or even rejection of the recommendations. Suppose both parties have agreed to written recommendation from the Mediator within a period of no later than 3 working days based on the written recommendation being approved. In this case, the Mediator shall assist the parties in making Collective Agreement which is registered at the Industrial Relations Court at the District Court to obtain the certificate of registration.

On the other hand, if one or both parties give a refusal answer, it shall be deemed to have rejected the suggestion from the Mediator. In this case, one or both parties may file an appeal to the Industrial Relations Court (IRC). Although the Mediator is not aware with the decision of the parties to appeal or not to be carried out at the Industrial Relations Court, the problem will be considered resolved at the Bali Province Manpower and ESDM Office until a Written Recommendation.

Mediation is practically carried out following the pre-pandemic mediation procedure, which refers to Law Number 2 in 2004 regarding the Industrial Relations Dispute Settlement. What distinguishes, it is that in addition to referring to Law Number 13 of 2003 concerning Manpower, the Mediator in dealing with employment issues also pays attention to the Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 of 2020 concerning Protection of Workers/Labourers and Business Continuity in COVID-19 Prevention and Control Framework.

In overcoming problems related to Termination of Employment, if based on the circular letter, employers are allowed to change the amount and method of payment of wages for the employee who are temporarily laid off due to the COVID-19 pandemic with the permanent record based on the agreement of both parties.

3.2 Obstacles Faced by Mediators in Resolving Industrial Relations Disputes between Workers and Employers

The factors that hinder the settlement of industrial relations disputes at the Department of Manpower and Energy and Mineral Resources of Indonesia of the Province of Bali are related to the Concept of

Effectiveness based on Soerjono Soekanto, which includes:^[10] the first is to look at the legal factor. This is related to the Mediator's obligation to issue recommendations if an agreement is not reached in the settlement process. In practice, sometimes recommendations are given at times that are not by the provisions of the Industrial Relations Dispute Settlement Law Article 13 paragraph (2) letter b, which determines that the appointed Mediator shall have issued a recommendation no later than ten working days from the first mediation session. This is due to requests from the disputing parties. One of the disputing parties asks for time to consider giving an agreement that can be exceed the time limit determined by the law and result in delays in the dispute resolution process.

The second factor is to look at the perspective of law enforcement. The facts obtained from the Department of Manpower and Energy and Mineral Resources of the Republic of Indonesia of Bali Province show very few available mediators. This affects the effectiveness and efficiency of the mediation efforts. The Mediator's workload is quite heavy since each Mediator is tasked with serving mediation requests and serving consultation requests from many parties who need it.

Facilities become the third inhibiting factor. The condition of the COVID-19 pandemic causes the mediation process to be rather difficult to carry out because when it is done face to face, the involved parties are obliged to implement health protocols, such as avoiding crowds involving more than five people in one room as ordered by the government to break the chain of the spread of the COVID-19. Therefore, the performance of the mediation process was shifted to online implementation. Unfortunately, not all parties can use online meeting applications well, such as WebEx, Zoom, WhatsApp, and even email. In addition, the online meeting process is also very dependent on the stability of the internet network at the place of the respective parties involved.

The fourth obstacle lies in the community factor. It can be seen that in the implementation of mediation, it is tough for the entrepreneurs involved in industrial relations disputes to appear at the time of mediation. This hinders the mediation session because those who represent the entrepreneur or a power of attorney in practice cannot make direct decisions in the Mediation of Industrial Relations Disputes to speed up the mediation in order that an agreement or win-win solution is reached between the employees and employers. Coercion of opinion between employers who deny committing violations of workers' rights and workers whose demands burden the entrepreneur also becomes an obstacle to mediation. Sometimes the parties are not open but cover up the truth of what happened, which makes it difficult for the Mediator to figure out the facts that happened. In addition, no data or letters are required as a source of information to continue the mediation process. With no working contracts being made, the mediators found it

challenging to do negotiation process and find solutions to resolve disputes.

The fifth obstacle lies in the cultural factor. The disputing parties do not comply with the rules that the Mediator has explained. For instance, ethical violations are committed by the parties; each party seems to want to bring down the other by expressing the weaknesses and disreputes of the other party. In addition, many of the parties were not present on time and did not even want to be present when called by the Mediator.

4. CONCLUSION

The role of the Mediator in resolving industrial relations disputes can be said to have been realized by the provisions of Law Number 2 in 2004 concerning Settlement of Industrial Relations Disputes. The difference in the implementation of mediation before and after the pandemic apart from referring to Law Number 13 in 2003 regarding Manpower, mediators in dealing with labor issues also pay attention to Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 of 2020 concerning Protection of Workers/ Labor and Business Continuity in the Context of Prevention and Control of COVID-19. There are also several obstacles faced by mediators in resolving industrial relations disputes. These obstacles include the Law on Industrial Relations Dispute Settlement, which stipulates limited time for mediators in giving advice, the number of mediators which is considered very lacking, the limitations of the parties in using teleconference technology as a support for the industrial relations dispute settlement process and the difficulty of making the disputing parties attend the dispute resolution process. In addition, the lack of discipline of the parties in carrying out the applicable rules in settling the industrial relations disputes also hinders the efforts of the Mediator to resolve.

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