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Legal Protection in The Settlement of Industrial Relations Disputes in Indonesia

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ABSTRAK

Article 2 of Law Number 2 Year 2004 states that there are four types of industrial relations disputes consisting of Rights Disputes, Interest Disputes, Termination of Employment Disputes and Disputes Between Workers / Labor Unions in One Company. This research uses normative juridical methods, the results of the study explain the form of legal protection in the settlement of industrial relations disputes in Indonesia outside the court can be done through: Bipartite, Mediation, Conciliation, Arbitration The four types of settlement If the negotiations reach an agreement, a collective agreement is made binding and becomes law for the parties. The collective agreement must be registered with the Industrial Relations Court at the District Court in the area where the parties entered into the collective agreement if it is not implemented by one of the parties, the injured party can apply for execution to the Industrial Relations Court. In addition to the above 4 explanations, the settlement of industrial relations disputes can be through the industrial relations court which is in the general judicial environment, which is limited in its process and stages by not opening the opportunity to file an appeal to the superior court.The decision of the industrial relations court at the district court which concerns rights disputes and employment termination disputes can be directly appealed to the Supreme Court.

1. Introduction

International law is unique compared to other areas of law. This is because international law is based on the existence and sovereignty of a state which is the supreme power. In other words, international law is based on the equality of states.(Imam Budi Santoso. 2017) International law of the sea is one of the branches of international law that has experienced significant development in at least the last 50 years and will always develop dynamically from time to time.(Akbar Pradima. 2013)

Article 1 Number 1 of Law Number 2 of 2004 concerning Industrial Relations Dispute Resolution states that industrial relations disputes are differences of opinion that result in conflict between employers or a combination of employers and workers/laborers or trade unions/labor unions due to disputes over rights, disputes over interests, disputes over termination of employment and disputes between trade unions/labor unions within one company.(Bambang Yunarko.2011)

There are four types of industrial relations disputes according to Article 2 of Law Number 2 Year 2004.(Haikal Arsalan, dkk. 2020)

a. Rights Dispute

Rights disputes are disputes arising from the non-fulfillment of rights, due to differences in the implementation or interpretation of the provisions of laws and regulations, work agreements, company regulations, or collective labor agreements (Article 1 Point 2 of Law Number 2 Year 2004).

b. Dispute of Interest

An interest dispute is a dispute arising in the employment relationship due to disagreement over the making of, and/or amendment to working conditions stipulated in a work agreement, or company regulation, or collective bargaining agreement (Article 1 Point 3 of Law No. 2 of 2004). With the enactment of Law No. 2 of 2004, the distinction between rights disputes and interest disputes known so far in the literature is based on the parties to the dispute, i.e. individual workers, involved in rights disputes, while workers collectively/organizationally become parties to interest disputes is no longer used as a reference.(Mila Karmila Adi. 2010) Workers, both individually and collectively, can now be parties to both rights disputes and interest disputes. Thus, what is important is the existence of a disputed object.(Maswadi. 2017)

c. Employment Termination Disputes

Perselisihan pemutusan hubungan kerja adalah perselisihan yang timbul karena There is no agreement of opinion regarding the termination of employment by one of the parties (Article 1 Point 4 of Law Number 2 Year 2004).

Disputes regarding termination of employment have been most common due to termination of employment by one party and the other party cannot accept it. Termination of employment can occur on the initiative of the employer or the worker/laborer. Employers do this because workers/laborers commit various acts or violations. Conversely, termination of employment can also be made at the request of the worker/laborer because the employer does not carry out the agreed obligations or acts arbitrarily towards the worker/laborer.

Although the law stipulates that employers, workers/laborers, trade unions/labor unions, and the government must jointly make every effort to prevent termination of employment. However, termination of employment is often unavoidable. This can be understood because the relationship between workers/laborers and employers is based

on an agreement to bind themselves in a work relationship. If one party no longer wishes to be bound or continue in the employment relationship, it is difficult to maintain a harmonious working relationship between the two parties.

d. Dispute between Workers/Labor Unions in One Company

A dispute between trade unions/labor unions is a dispute between a trade union/labor union and another trade union/labor union within a single enterprise, due to a lack of understanding regarding membership, the exercise of rights, and the obligations of the union (Article 1 Point 5 of Law Number 2 Year 2004). Labor regulations that allow two or more trade unions to be formed in a company are intended to guarantee freedom of association for workers. Law No. 21/2000 on Trade Unions/Labor Unions has made it easier for workers/laborers to form trade unions/labor unions at the enterprise level, with a minimum of ten members. With this condition, in a company there will be several trade unions under different "flags".

Based on data from the Ministry of Manpower in March 2020, the number of workers who are members of trade union organizations is 3,378,808 people, consisting of 195 confederation units and 1051 federation units. In carrying out their activities, these trade unions will have the potential to create conflicts between one another, especially in negotiating collective labor agreements with employers. One trade union claims that it is authorized to make such agreements with employers, while another trade union says the same thing. Based on this background, the focus of this research is Legal Protection in the Settlement of Industrial Relations Disputes in Indonesia.

2. Method

This research uses a normative juridical method. This research is conducted by examining library materials, starting from primary legal materials, namely, among others, all laws and regulations governing the Settlement of Industrial Relations Disputes in Indonesia, secondary legal materials (legal materials that provide explanations of primary legal materials) and tertiary legal materials (legal materials that provide guidance and explanations of primary and secondary legal materials). The data collected both secondary and primary and tertiary are then analyzed qualitatively.

3. Results dan Discussion

There are four types of procedures for resolving industrial relations disputes out of court, namely:

First, Bipartite is a negotiation between workers/laborers or trade unions/labor unions and employers to resolve industrial relations disputes (Article 1 Point 10 of Law Number 2 Year 2004). This bipartite settlement must be implemented and minutes signed by both parties. The bipartite process must be completed within a maximum of thirty working days from the date of commencement of negotiations (Article 3 Paragraph (2). If within thirty days one of the parties refuses to negotiate or negotiations have been conducted but no agreement has been reached, the bipartite negotiations are deemed to have failed. If the negotiations reach an agreement, a collective agreement is made as stipulated in Article 7 Paragraph (1). The collective agreement is binding and becomes law for the parties (Article 7 Paragraph (2). The collective agreement must be registered with the Industrial Relations Court at the District Court in the area where the parties entered into the

collective agreement (Article 7 Paragraph (3), and if it is not implemented by one of the parties, the aggrieved party may apply for execution to the Industrial Relations Court at the District Court in the area where the collective agreement is registered to obtain a determination of execution (Article 7 Paragraph (5).

Second, Mediation is a settlement of rights disputes, interest disputes, employment termination disputes, and disputes between trade unions/labor unions in only one company through deliberation mediated by one or more neutral mediators (Article 1 Point 11). Thus, mediation is an institution authorized to resolve all types of industrial relations disputes. Dispute resolution through mediation is carried out by mediators who are located in each office of the agency responsible for the field of labor / district / city Article 8). The mediator can summon witnesses or expert witnesses to attend the mediation session to be asked and heard (Article 11 Paragraph (1)). If an agreement is reached to settle the industrial relations dispute through mediation, a collective agreement is made signed by the parties and witnessed by the mediator and registered at the Industrial Relations Court at the District Court in the jurisdiction of the parties to the collective agreement to obtain a certificate of proof of registration (Article 13 Paragraph (1)). In the event that no agreement is reached on the settlement of an industrial relations dispute through mediation, the mediator shall issue a written recommendation (Article 13 Paragraph (2) Letter a). The parties may accept or reject the written recommendation. If they accept, the mediator must make a collective agreement binding on both parties. However, if one or both parties reject the written recommendation, the parties or one of the parties may continue the dispute settlement to the Industrial Relations Court at the local District Court (Article 14 Paragraph (1)).

Third, Conciliation is a settlement of interest disputes, employment termination disputes or disputes between trade unions/labor unions in only one company through deliberation mediated by one or more neutral conciliators. Thus, conciliation has the authority to settle three types of disputes, namely interest disputes; employment termination disputes; and disputes between trade unions/labor unions in only one company. Settlement through conciliation begins no later than seven working days after receiving a written request for dispute resolution, i.e. the conciliator must have conducted research on the case and no later than the eighth working day the first conciliation hearing must have been held (Article 20).

If there is an agreement to settle an industrial relations dispute through conciliation, a collective agreement is made signed by the parties and witnessed by the conciliator and registered at the Relations Court at the District Court in the jurisdiction of the Industrial parties entering into a collective agreement to obtain a deed of proof of registration (Article 23 Paragraph (1)). Otherwise the conciliator issues a written recommendation (Article 23 Paragraph (2) Letter a). If the parties accept the recommendation, the conciliator is obliged to make a collective agreement to be registered at the Industrial Relations Court at the District Court in the area where the parties entered into the collective agreement to obtain proof of registration (Article 23 Paragraph (2) Letter e). However, if one of the parties or the parties reject the suggestion, either party or the parties may proceed with dispute settlement to the Industrial Relations Court at the local District Court (Article 24 Paragraph (1)). The conciliator

completes his/her duties within 30 (thirty) working days at the latest as of receiving the request for dispute resolution (Article 25).

Fourth, Arbitration is the settlement of an interest dispute, and a dispute between trade unions/labor unions in only one company, outside the Industrial Relations Court through a written agreement of the disputing parties to submit the settlement of the dispute to an arbitrator whose decision is binding on the parties and is final (Article 1 Point 15). Thus, this arbitration authority is to resolve two types of industrial relations disputes, namely interest disputes and disputes between trade unions/labor unions within one company only. The arbitrator shall settle the industrial relations dispute within thirty working days at the latest from the signing of the agreement letter appointing the arbitrator and the examination of the dispute shall commence within three working days at the latest from the signing of the agreement letter appointing the arbitrator (Article 40 Paragraphs (1) and (2)).

The settlement of industrial relations disputes by arbitrators must begin with an effort to reconcile the two disputing parties. If peace is reached, the arbitrator or panel of arbitrators shall draw up a deed of peace signed by the parties to the dispute and the arbitrator or panel of arbitrators and register the deed with the industrial relations court at the district court in the area where the arbitrator made the peace (Article 44 Paragraphs (1), (2) and (3). If the attempt at reconciliation fails, the arbitrator (arbitral tribunal) proceeds with the arbitration hearing (Article 44 Paragraph (5)).

In the hearing, the parties are given the opportunity to explain their respective positions and submit evidence (Article 45 Paragraph (1). The arbitrator(s) may call witnesses or expert witnesses to testify at the arbitration hearing. The award of the arbitration hearing shall be based on the prevailing laws and regulations, agreements, custom, justice and public interest (Article 49). The arbitration award has legal force that binds the disputing parties and is final and permanent, and is registered at the Industrial Relations Court at the District Court in the area where the arbitrator makes the award (Article 51 Paragraphs (1) and (2).

Against an arbitral award, either party may file a petition for annulment to the Supreme Court within a period of no later than thirty working days from the issuance of the arbitrator's award. If the award is suspected of containing the following elements: (Article 52 Paragraph (1):

1) A letter or document submitted in the examination, after the judgment has been rendered, is recognized or declared to be false;

2) A decisive document is found after the judgment has been rendered, which has been concealed by the opposing party;

3) The verdict is based on a deceit committed by one of the parties to the dispute examination;

4) The award exceeds the powers of the industrial relations arbitrator; or

5) The award is contrary to laws and regulations. Industrial relations disputes that are being or have been resolved through arbitration cannot be submitted to the Industrial Relations Court (Article 53).

In addition to the above 4 explanations, the settlement of industrial relations disputes through industrial relations courts in the general judicial environment is limited to the process and stages by not opening the opportunity to file an appeal

to the high court to ensure fast, precise, fair and inexpensive dispute resolution.Decisions of industrial relations courts in district courts concerning rights disputes and employment termination disputes can be directly appealed to the Supreme Court. Decisions of industrial relations courts at the district courts concerning interest disputes and disputes between trade unions/labor unions in one company are decisions of the first and last instance that cannot be appealed to the Supreme Court.

The absolute authority of the absolute competence of the industrial relations court is mentioned in Article 56, which states that the industrial relations court is tasked and authorized to examine and decide:

1) in the first instance regarding rights disputes;
2) in the first and final instance regarding interest disputes;
3) at the first instance regarding employment termination disputes;
4) at the first and last instance regarding disputes between trade unions/labor unions within one company.

These rights disputes are normative disputes stipulated in collective labor agreements, company regulations or laws and regulations, and are not resolved by conciliators (through conciliation) or arbitrators (through arbitration), but before being submitted to the Industrial Relations Court, they are first resolved through mediation. Interest disputes occur due to differences of opinion or interests regarding labor conditions that have not been regulated in work agreements, collective labor agreements, company regulations or laws and regulations. Interest disputes are the first and last level of settlement decided by the industrial relations court at the general court (cassation cannot be requested to the Supreme Court). This is intended to ensure a quick, precise, fair and inexpensive settlement.

Dispute regarding termination of employment is a dispute that occurs because the parties or one of the parties does not agree on the termination of employment. Previously, the regulation regarding the settlement of employment termination was regulated in Law No. 12/1964 whose settlement procedure was quite long and took a long time, starting from the level of intermediary employees of the district/city labor office, P4D, P4P, to the minister of labor.

After the decision of the central labor dispute settlement committee (P4P) was established as the object of a state dispute, as stipulated in Law No. 5 of 1986 on State Administrative Courts, the road that must be taken by both workers/laborers and employers to seek justice has become longer.

This lengthy procedure is now simplified with first handling through the industrial relations court at the general court, and the possibility of filing a cassation at the Supreme Court. This is intended to provide an opportunity for parties who are not satisfied with the decision of the industrial relations court to re-examine the dispute at a higher court, because the issue of termination of employment is a complex issue.

Disputes between labor unions in companies are a new type of dispute that is not found in previous legislation. This dispute was born to anticipate disputes between labor unions at the enterprise level arising from the enactment of Law No. 21/2000 on Labor Unions. The scope of disputes that occur will not be too complex, which revolves around the membership, validity, or authority of the trade union/labor union in

making collective labor agreements with the employer. Similar to interest disputes, disputes between trade unions are handled by the Industrial Relations Court at the General Court. This is intended to achieve fast, easy, and low cost justice.

In addition to the absolute authority as mentioned above, in civil procedure law there is also relative authority or relative competence of the court, to answer the question, which court is authorized to hear a dispute. The answer to this question is mentioned in Article 118 Paragraph (1) HIR, Article 142 Paragraph (1) Rbg that the court at the residence / address of the defendant is authorized to examine a lawsuit. This provision is very wise because a defendant cannot be forced to appear in the court where the plaintiff resides just because he is sued by the plaintiff which is not necessarily proven to be true. In addition, the defendant must be respected for his rights and must be considered the correct party until there is a court decision that has obtained permanent legal force.

The above provisions apply to civil cases in general, while regarding the relative authority or competence of the industrial relations court, it is the industrial relations court at the district court whose jurisdiction covers the place where the worker/laborer works that examines a lawsuit (Article 81 of Law Number 2 Year 2004). Thus, for industrial relations disputes, the lawsuit is registered at the industrial relations court at the district court whose jurisdiction covers the place where the worker/laborer works or where the company is located. Industrial relations disputes between workers/laborers and employers occur in the company where the workers/laborers work, so it is appropriate to use this as a reference for filing industrial relations disputes.

- **Lawsuit Filing**

The settlement of industrial relations disputes through the industrial relations court at the district court is carried out by filing a lawsuit by one of the parties. this lawsuit is a new issue, which previously in the settlement at P4D/P4P was enough to make a request letter." After the lawsuit is completed, the plaintiff or his/her attorney signs the lawsuit and registers the lawsuit with the industrial relations court at the district court in the jurisdiction where the worker/laborer works. At the time of registering the lawsuit, the plaintiff must pay case fees which include the costs of the registrar's office, summoning fees, and notification of the parties to the lawsuit. Specifically for industrial relations cases, Article 58 of Law No. 2/2004 states that in the process of litigating in the Industrial Relations Court, the parties are not charged fees, including execution costs for lawsuits with a value below Rp150,000,000.00 (one hundred and fifty million rupiah).

Thus, only lawsuits with a value of Rp150,000,000.00 or more are subject to court fees including execution costs. Industrial relations dispute lawsuits must attach minutes of settlement through mediation or conciliation. If not, the judge is obliged to return the lawsuit to the plaintiff (Article 83 of Law Number 2 Year 2004). From this provision it is clear that the disputing parties must first settle their dispute through mediation or conciliation, not directly to the industrial relations court. The industrial relations court is the last resort after peaceful resolution through bipartite, mediation, and conciliation.

The industrial relations court judge is obliged to examine the contents of the lawsuit and if there are deficiencies, the judge asks the plaintiff to complete the lawsuit. The plaintiff may withdraw the lawsuit at any time before the defendant

provides an answer. If the defendant has provided an answer to the lawsuit, the withdrawal of the lawsuit by the plaintiff will be granted by the industrial relations court only if agreed by the defendant (Article 85 of Law Number 2 Year 2004).

The President of the District Court must, within seven working days after receiving the lawsuit, appoint a panel of judges consisting of one judge as the head of the panel and two ad-hoc judges as members of the panel to hear and decide the dispute. The ad-hoc judges consist of one ad-hoc judge proposed by the trade union/labor union and one ad-hoc judge whose appointment is proposed by the employers' organization.

- **Examination by Ordinary Procedure**

Law Number 2 Year 2004 does not fully regulate the procedure for examination in court. In accordance with the provisions of the Article which states that the procedural law applicable to the Industrial Relations Court is the civil procedural law applicable to courts within the General Courts, except those specifically regulated in this law. The summons is delivered by a summons letter to the parties at their residential address or place of residence, last (Article 89 Paragraph (2)). Receipt of the summons by the summoned party in person or through another person shall be made with a receipt (Article 89 Paragraph (4)). If neither the place of residence nor the place of last residence is known, the summons shall be affixed to a place of announcement in the building of the industrial relations court examining it (Article 89 Paragraph (5).

If the parties cannot be reconciled, then the reading of the lawsuit shall commence (Article 131 Paragraph (1) HIR, 155 Paragraph (1) Rbg). For the lawsuit that has been submitted by the plaintiff, the defendant is given the opportunity to give his answer in court. Furthermore, the plaintiff is given the opportunity to provide his response to the defendant's answer. This is called a replication. Against the replication of the plaintiff, the defendant can provide a response called duplic. This answer-answer program is intended to find out and determine the subject of the dispute. If from the answer between the plaintiff and the defendant it is known what is the subject of the dispute, the answer is considered sufficient and declared complete by the judge and the evidentiary proceedings begin.

In the procedural law of industrial relations court, it is possible at the first hearing, if the employer is proven not to carry out his obligations regarding the suspension of workers/laborers who are in the process of terminating employment relations, he is still obliged to pay wages and other rights that are usually received by workers/laborers. The presiding judge shall issue an interlocutory decision in the form of an order to the employer to pay wages and other rights that should be received by the worker/laborer concerned (Article 96 Paragraph (1) of Law Number 2 Year 2004).

Normatively, Article 96 Paragraph (1) provides protection to workers/laborers to obtain wages and other rights commonly received by workers/laborers. In the lawsuit, the worker/labor submits a request to the panel of judges to impose an interlocutory decision regarding the unpaid wages and other rights that should be received by the worker/labor before the panel of judges examines the subject matter of the dispute. In accordance with the principle in civil justice, judges are passive, the interlocutory decision is not immediately imposed but must be requested by the plaintiff in his lawsuit. This is also confirmed in the explanation of Article 96 Paragraph (1) that the request for an interlocutory

decision is submitted together with the lawsuit material.

If the presiding judge grants the request for an interlocutory decision in the form of an order to the employer to pay wages and other rights that should be received by the worker/labor concerned, the employer must implement the interlocutory decision. The interlocutory decision as referred to in Article 96 Paragraph (1) and the determination as referred to in Article 96 Paragraph (2) cannot be challenged and/or legal remedies cannot be used (Article 96 Paragraph (4) If the interlocutory decision is not implemented by the employer, the presiding judge may order a security seizure. It is confirmed that as long as the dispute examination is still ongoing and the interlocutory decision is not implemented by the employer, the presiding judge shall order the confiscation of collateral in a stipulation of the industrial relations court (Article 96 Paragraph (3).

- **Fast Track Examination**

If the interests of the parties and/or one of the parties are sufficiently urgent that must be inferred from the reasons for the request of the interested party, the parties and/or one of the parties may request the Industrial Relations Court to expedite the examination of the dispute (Article 98 Paragraph (1). Within seven working days after receipt of the request, the head of the district court shall issue a decision on whether the request is granted or not (Article 98 Paragraph (2). No legal action may be taken against the decision. If the petition as referred to in Article 98 Paragraph (1) is granted, the President of the District Court shall within seven working days after the issuance of the determination determine the Panel of Judges, the day, place and time of the hearing without going through the examination procedure (Article 99 Paragraph (1) of Law Number 2 Year 2004. The period of time for reply and proof of both parties shall not exceed 14 working days.

- **Proof**

Evidence is a very important process in the trial. The parties submit evidence to confirm the arguments that have been conveyed at trial. The truth of an event can only be obtained through proof. The judge must recognize the event that has been proven to be true in order to render a fair verdict.

- **Verdict**

The judge must first know completely and objectively the actual sitting of the case which can be known from the evidentiary process in order to resolve or end a dispute or case. After an event is proven, the judge must find the law of the disputed event. Judges are not allowed to make decisions without proof. The key to rejecting or granting a lawsuit must be based on evidence derived from the facts submitted by the parties. Evidence can only be upheld based on factual support.

- **Cassation Proceedings**

If the parties or one of the parties does not accept the decision of the industrial relations court, the legal remedy is to file a cassation to the Supreme Court. Article 111 of Law Number 2 Year 2004 confirms that a party or parties wishing to file a cassation petition must submit it in writing through the Sub Registrar of the industrial relations court at the local district court. no later than fourteen working days from the date of receipt of the cassation petition, the case file must be submitted to the Chief Justice of the Supreme Court.

- **Execution**

Execution means the implementation of a court decision. Decisions that can be executed are decisions that have permanent legal force, because the opportunity to make legal remedies such as appeal, cassation or verset is no longer possible.

4. Conclusion

The provision Industrial Relations disputes can be settled out of court through four types, namely: First, Bipartite is settled within a maximum of thirty working days from the date of commencement of negotiations. Second, Mediation is conducted by mediators located in each office of the agency responsible for manpower. Third, Conciliation resolves interest disputes, employment termination disputes or disputes between trade unions/labor unions in only one company through deliberations mediated by one or more conciliators. Fourth, Arbitration resolves two types of industrial relations disputes, namely interest disputes and disputes between trade unions/labor unions in only one company. If negotiations reach an agreement, a collective agreement is made as stipulated in Law Number 2 Year 2004. The collective agreement is binding and becomes law for the parties. The collective agreement must be registered with the Industrial Relations Court at the District Court in the area where the parties entered into the collective agreement. If it is not implemented by one of the parties, the injured party can apply for execution to the Industrial Relations Court. In addition to the above 4 explanations, the settlement of industrial relations disputes can be through the industrial relations court which is in the general judicial environment, limited by the process and stages by not opening the opportunity to file an appeal to the high court to ensure fast, precise, fair and inexpensive dispute resolution.The decision of the industrial relations court at the district court concerning rights disputes and employment termination disputes can be directly appealed to the Supreme Court. The absolute competence of the industrial relations court is stated in Article 56 of Law No. 2/2004.

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