

## **Legal Protection in Labor Dispute Settlement Through Industrial Relations Mechanism**

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### **ABSTRACT**

This article discusses one of the Indonesian legal products used in the settlement of labor disputes, namely the industrial relations mechanism, which is part of the legal product to resolve disputes by legal protection measures. This article aims to find out the mechanism of Industrial Relations to provide legal protection in labor disputes. This article is normative juridical research that analyzes secondary data from legal studies literature in the form of books, journals, and other materials related to the research topic of this article. The data analysis technique used is content analysis. The results of the analysis show that legal protection in labor disputes with industrial relations mechanisms can be carried out through the Bipartite, Tripartite, and Industrial Relations Courts (PHI). The results of this court's decision do not only stop in writing on paper, but there must be a follow-up from the losing party to carry out their obligations based on the demands that have been set.

Keywords: Employment, Industrial Relations, Disputes, Courts

### **ABSTRAK**

Artikel ini membahas salah satu produk hukum Indonesia yang digunakan dalam penyelesaian sengketa ketenagakerjaan yaitu mekanisme hubungan industrial yang menjadi bagian dalam produk hukum untuk menyelesaikan sengketa yang sesuai dengan langkah-langkah perlindungan hukum. Artikel ini bertujuan untuk mengetahui mekanisme Hubungan Industrial memberikan perlindungan hukum dalam sengketa ketenagakerjaan. Artikel ini merupakan penelitian yuridis normatif yang menganalisis data sekunder dari bahan pustaka kajian hukum berupa buku, jurnal dan bahan lain yang berkaitan dengan topik penelitian artikel ini. Teknik analisis data yang digunakan adalah teknik analisis isi (*content analysis*). Hasil analisis menunjukkan bahwa perlindungan hukum dalam sengketa ketenagakerjaan dengan mekanisme hubungan industrial dapat dilakukan melalui Bipartit, Tripartit, dan Pengadilan Hubungan Industrial (PHI). Hasil keputusan dari pengadilan ini tidak hanya berhenti dalam tulisan di atas kertas saja, tetapi harus ada tindak lanjut dari pihak kalah agar melakukan kewajiban berdasarkan tuntutan yang telah ditetapkan.

Kata Kunci: Ketenagakerjaan, Hubungan Industrial, Perselisihan, Pengadilan

## **INTRODUCTION**

Employment is an important aspect that the state must pay attention to in discussing employers and workers. Soleh (2017, p. 83) states that labor is a resource with an important role in boosting a country's economy. As an important aspect of the state economy, the government needs to obtain legal certainty, the value of Justice, law enforcement, and order through labor law (Soewono, 2007, p. 1).

As an intermediary between entrepreneurs and workers, Indonesia presents industrial relations as a reference for employment. Hamid (2021 p. 117) defines industrial relations as a system of relations between actors in the business production process, including workers/hunters, entrepreneurs, and the

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government, based on the values in the Pancasila precepts and the 1945 Constitution. Industrial relations often occur differences which end in disputes.

Disputes arise because workers are dissatisfied with the employer's decisions or policies. If the dispute can be resolved properly, it will not cause a dispute. Mustakim (2018, p. 3) says that a dispute can escalate into a dispute if it is not resolved and eventually disrupts the relationship between the two. Differences of opinion in disputes in industrial relations occur because there are disputes over rights and interests, which then end in conflict (Karsona & Fakhriah 2016, p. 304). Based on the science of law, industrial/labor relations disputes are divided into disputes over rights and interests (Soepomo, 1985, p. 7).

The enactment of Law Number 2 of 2004 concerning Industrial Relations Disputes (PHI) on January 14, 2004, became a solution in the context of maintaining industrial relations so that they remain fair, harmonious, and dynamic with the presence of a dispute resolution institution (Karsona et al., 2020, p. 159). Based on the cases that often occur, the PHI is divided into four categories: Termination of Work Rights (PHK), disputes over rights, disputes between trade unions, and differences in interests.

Research on legal protection and settlement of labor disputes has been carried out. Luthi Febryka Nola, with the title Integrated Legal Protection Efforts for Indonesian Migrant Workers (TKI), explained the law that regulates legal protection for TKI, the scope of the legal protection, as well as legal remedies that TKI will get when a violation occurs (Nola, 2016). Agus Mulya Karsona and Efa Laela Fakhriah, with the title The Existence of the Industrial Relations Court in settlement of Employment Disputes in Indonesia, stated that there are many factors behind the Industrial Relations Court is often used to resolve disputes, namely that workers rarely win in court, the decisions made are often not implemented. And employers do not fulfill their obligations (Karsona & Fakhriah 2016). Adnan Hamid, with the title Arbitration as an Alternative in settlement of Labor Disputes, explained that the settlement of labor disputes out of court could be carried out by Arbitration as regulated in Law number 2 of 2004 concerning Settlement of Relationship Disputes Industrial law (UUPPHI) which is carried out in a limitative way, namely labor disputes relating to disputes of interest and disputes between labor unions in one company (Hamid, 2021).

Based on the three studies above, they have similarities with this research. Namely, they both discuss legal protection, the Industrial Relations Court, and dispute resolution. However, none of the three studies have discussed legal protection in labor disputes through the Industrial Relations Court. This is what distinguishes this article from previous studies. Therefore, based on the problems above, this article analyzes legal protection in labor disputes based on the industrial dispute mechanism. Law Number 2 of 2004 concerning Industrial Relations Disputes stipulates the settlement of labor disputes through three steps, namely through the Bipartite, Tripartite, and Industrial Relations Courts (PHI). This article aims to find out the mechanism of Industrial Relations to provide legal protection in labor disputes.

## **RESEARCH METHOD**

This article uses the normative juridical method chosen in the analysis process. Sunggono (2003, pp. 27-28) says that a normative juridical method is a form of legal research literature by examining secondary data or library data. This method will conduct an analysis based on legal norms in the legislation. Data acquisition is made through a literature study. A literature study reviewed written information about the law from various sources (Muhammad, 2004, p. 81). The data was used in the form of secondary data, namely secondary legal study materials derived from books, journals, and expert opinions in law. The analysis technique used is the content analysis technique.

## **RESULTS AND DISCUSSION**

### **Definition of Legal Protection**

Legal protection is one of the protectors of Human Rights (HAM). According to Raharjo (Nola, 2016, p. 40), legal protection is an effort to organize various interests in the community so that there are no disputes. Legal protection illustrates the function of establishing a legal order, namely providing order, Justice, Peace, certainty, and benefit. In legal science, the real form of legal protection is indicated by the formation of law enforcement institutions, such as prosecutors and courts, and non-litigation institutions (outside the court) that assist in dispute resolution.

As a universal concept in a country, legal protection is presented in two forms, namely preventive and repressive legal protection. Preventive legal protection is protection with the aim of preventing disputes from occurring. In this case, the government is directed to be careful in making decisions, while repressive protection is protection to resolve disputes that occur (Hadjon, 1987, p. 2).

1. Preventive legal protection, realized by the establishment of legislation. This protection aims to prevent before a violation occurs. The laws that are formed are used as signs or warning limits to a person/group when they are about to act. In protecting legal subjects, preventive protection requires them to express their opinions or objections before a government decision is decided. Therefore, this legal protection helps the government be more careful in making decisions.
2. Repressive legal protection is manifested by the stipulation of penalties, fines, and imprisonment as the final decision of a dispute or violation. This legal protection is handled directly by the General Court and Administrative Court. In practice, this protection is based on human rights, obligations of society and government, and the rule of law principles.

### **Industrial Relations and Employment**

In employment matters, disputes and differences of opinion are very common. Disputes between employers and workers occur because one of the parties feels dissatisfaction, generally on the part of the workers. The employers feel that they have thought through the policies that will be set, but the workers feel that their rights have not been fulfilled. Dissatisfaction that is often encountered is related to salary, health insurance, social security, work system, and even personal problems (Asyhadi, 2007, p. 127).

Based on article 2 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, the disputes referred to include: disputes over rights, disputes over interests, disputes over the termination of employment, and disputes between trade unions/labor unions within the same company (Hamid, 2021, p. 126).

1. Disputes over rights. Disputes that occur due to work or business regulations that have been determined are not implemented properly. As a result, workers' rights are not fully conveyed.
2. Disputes of interest. Disputes occur because the provisions of laws and regulations regarding work rules are drawn up or made not in accordance with general opinion. The arrangement of these rules is often prepared because of the interests of certain parties that can harm other parties.
3. Disputes over the termination of employment. The dispute is due to the unilateral termination of employment from the business owner without any prior discussion or warning.
4. Disputes between trade/labor unions. Disputes that occur between trade/labor unions within the company. Disputes occur because there is uncertainty regarding the structure of members, work obligations, and the implementation of rights.

Disputes that arise within the scope of employment above need to be handled quickly and appropriately. If not taken seriously, these disputes can worsen the working relationship between employers and workers. Poor working relations in a business will slow down or disrupt the company's production process.

Settlement of disputes in order to produce proper and fair results can be carried out using industrial relations mechanisms or principles. In Indonesia, industrial relations based on Pancasila solve problems in the employment sector (Mustakim, 2018, pp. 3-4). Currently, the settlement of disputes or labor disputes in the principle of industrial relations emphasizes that they must be resolved through deliberation or amicably. This application is intended so that the agreed consensus is the fairest solution.

Prior to the enactment of Law Number 2 of 2004, the settlement of labor disputes still referred to Law Number 22 of 1957 concerning the Settlement of Labor Disputes and Law Number 12 of 1964 concerning Termination of Employment in Private Companies. As the times progressed, the two previous laws were no longer relevant in resolving labor disputes.

The presence of Law Number 2 of 2004 provides a way out in resolving labor disputes. Industrial relations are presented on the basis of the constitutional basis of the 1945 Constitution, the basis of the *Idiil Pancasila*, the operational basis of the Outlines of State Policy (GBHN), and implementing regulations from the government. As a form of legal protection, dispute resolution steps can be carried out through three mechanisms: the Bipartite, Tripartite, and Industrial Relations Courts (PHI).

### **Legal Protection in Labor Disputes based on Industrial Relations Mechanisms**

Based on the industrial relations mechanism, disputes or disputes in employment can be resolved through the Bipartite, Tripartite, and Industrial Relations Courts (PHI).

#### ***legal Protection through Bipartite***

The first step taken by the two parties in dispute in terms of employment is through Bipartite. Mustakim (2018, p. 36) defines Bipartite as one of the steps for resolving disputes by deliberation to produce consensus, in accordance with Law Number 13 of 2003 concerning Manpower. Khakim (2007, p. 151) added, Bipartite becomes a negotiation mechanism between employers and workers/laborers when there is a dispute. Disputes that can be resolved through Bipartite are all disputes in Law Number 2 of 2004.

The settlement process through Bipartite, which is carried out by both parties, ends with the signing of the results of the deliberation. This process is limited to 30 days. In practice, the results of the Bipartite deliberations can result in an agreement or vice versa, meaning that Bipartite has failed. Follow-up as the handling of Bipartite results is divided into two: follow-up when an agreement is reached and follow-up for Bipartite failure.

1. Follow-up when an agreement is reached

Bipartite, which ends with the agreement of both parties, requires the making of a legally binding Collective Agreement. This follow-up is carried out based on Article 7 paragraphs (2) and (3) of Law Number 2 of 2004, which states that the Industrial Relations Court that accepts the Collective Agreement must file and register it with the Industrial Relations Court at the District Court where the agreement was signed. This legal binding is intended so that each party can apply for court execution to the District Court if the other party does not carry out the agreed Collective Agreement.

2. Follow-up when Bipartite fails

Failed bipartite parties require both parties to report disputes to the agency responsible for manpower affairs. In legal terms, this step is interpreted as Tripartite. The responsible agency acts as an intermediary between the two parties in dispute.

### ***Legal Protection through Tripartite***

Both parties must take the next step if Bipartite fails through Tripartite. The two disputing parties report problems that occur to the responsible institution. After receiving the report, the institution must choose the possible settlement method, namely through Arbitration or Conciliation. If the two options are not selected, then the final step in the Tripartite is through mediation.

#### **1. Arbitration**

- 1) Arbitration is an option from the institution to the two parties who report the dispute. Arbitration is used in resolving disputes of interest and disputes between trade/labor unions. The result of the Arbitration Agreement is the final dispute resolution decision and cannot be continued to the Industrial Relations Court. The agreement obtained in the Arbitration must be accompanied by a deed of reconciliation signed by both parties to the dispute and witnessed by an arbitrator. The reconciliation deed is done in three copies for each disputing party. One copy is submitted to the Industrial Relations Court as the legal force that cannot be submitted to the court again. The arbitration agreement can be accepted if it contains the following:
  - 2) Full name and address of the company where the disputing party works or has an interest.
  - 3) The essence of the problem that is the cause of the dispute.
  - 4) The number of arbitrators that have been determined and mutually agreed upon.
  - 5) Statements from both parties who are in dispute to comply with and implement the agreed arbitration decision.
  - 6) The name of the place and the date the peace deed was done.
  - 7) Signature of the two disputing parties.

However, if one of the parties considers doubts in the agreement, it can file a Decision of Default to the District Court accompanied by evidence as reinforcement.

#### **b. Conciliation**

Conciliation is an option for the institution to the two parties who report the dispute. Conciliation is used to resolve conflicts of interest and disputes between trade/labor unions. In carrying out Conciliation, the presence of a conciliator is required. The conciliator is an official in conciliation activities determined by the Minister of Manpower with reference to the advice of the trade/labor union.

Conciliation activities can only be carried out if the two parties in a dispute submit a dispute/dispute settlement request to the conciliator and have been legitimized in the worker/laborer's working area. The conciliator is given seven days after the written request is received to study the essence of the dispute at hand. After that, on the eighth day, a conciliation session was held. The follow-up of the conciliation session is adjusted to the results obtained, whether there is an agreement or not.

#### **2. An agreement was reached**

The follow-up to the results of the conciliation session, which reached an agreement between the two parties, was carried out by signing a mutual agreement letter from both parties witnessed by the conciliator. After that, the agreement letter is submitted to the Industrial Relations Court to be

registered with the District Court in the area where the two parties agree with the ultimate goal of obtaining proof of registration.

3. No agreement reached

The follow-up to the conciliation session that does not reach an agreement is carried out by issuing a written recommendation by the conciliator. Both parties are given ten days to decide to accept or reject the written recommendation. If it is more than the specified day, it will be declared refusing the recommendation. In addition, if one of the parties does not provide an answer, it is also a benchmark that conciliation activities do not reach an agreement.

4. Mediation

Mediation is a settlement step if arbitration and conciliation activities do not result in an agreement that both parties accept. Sutiyoso (2006, p. 54) defines mediation as a dispute resolution activity that involves a third party who mediates the problem. In this case, mediation is used to settle disputes over rights, interests, termination of employment, and between trade/labor unions that cannot be resolved through the previous stages of industrial relations.

In its implementation, a mediator (intermediary) is an employee of the local manpower office. Before determining the use of mediation in dispute resolution, the Manpower Office gives the disputing parties seven days to use Arbitration or Conciliation. If there is no decision from both of them, the dispute is transferred to the mediator. Mediation activities are carried out in a closed situation and confidentiality is maintained. The mediator as an intermediary acts as a translator regarding the problems/disputes. In its implementation, the mediator is prohibited from forcing the results of his thoughts to be obeyed by both parties. That is, the decision on the agreed outcome remains in the hands of each party.

### **Legal Protection through the Industrial Relations Court (PHI)**

The final step in the industrial relations mechanism to resolve labor disputes/disputes is through the Industrial Relations Court (PHI). This court is a special court within the general court environment. In a district court, the Industrial Relations Court is composed of (1) judges, (2) ad hoc judges, (3) junior clerks, and (4) substitute clerks. Meanwhile, in the cassation court at the Supreme Court, the Industrial Relations Court is composed of (1) supreme judges, (2) ad hoc judges at the Supreme Court, and (3) clerks. The procedural law used by the IRC in resolving labor disputes is the Civil Procedure Code used in the General Court. In accordance with the contents of Article 56 of Law Number 2 of 2004, the PHI has the duty and authority to decide:

1. rights disputes (first degree);
2. conflict of interest (first and last level);
3. disputes over the termination of employment (first level); and
4. disputes between trade/labor unions within a company (first and last level)

In its implementation, the Industrial Relations Court (PHI) refers to the judicial process according to the guidelines of civil procedural law. The final stage of this court process is when the Industrial Relations Court (PHI) judge has issued a decision regarding the dispute that is being handled. There will be one party who is declared defeated and must carry out the decisions made voluntarily.

In reality, the losing party often does not carry out its obligations based on the results of the decisions that have been determined. Therefore, there are provisions or regulations regarding execution. According to Erwin (2015, p. 5), execution is a forced implementation of a court decision that has been determined and has become a set of elements contained in HIR/RBg in implementing its rules.

The execution after the decision of the Industrial Relations Court (PHI) judge will make the disputing parties tired, and their time will be wasted. However, if the decision is left alone, it will only be a decision on paper. Obstacles in implementing the results of the decision mostly come from the party who lost in the trial, the party did not accept his defeat. In the Industrial Relations Court (PHI), the losing party cannot appeal the decision that has been determined (Supreme Court of the Republic of Indonesia, 2006, p. 16). Therefore, the role of the Chief Justice is needed to intervene so that the execution can run smoothly.

A decision made by a judge must have executive power. It can assert rights and penalties that will be followed up through execution activities with the assistance of state instruments, namely the courts (Nasir, 2003, p. 14). The executive power in court decisions is marked by the inclusion of the sentence For Justice based on the One Godhead. If the sentence is not stated, then the decision that has been determined is questioned regarding its validity and will be limited by law. The executive power is also not contained in it. In addition, the judge's decision that can go through the execution stage when the losing party does not carry out voluntarily is only a decision containing a penalty or is called condemnation.

In general, there are three types of execution or execution of decisions. First, the execution is executed voluntarily. This type of execution is present when the losing party is not willing to voluntarily carry out its obligations or demands from the results of a predetermined decision. In this case, it must be able to distinguish between decisions that are carried out voluntarily and decisions that are carried out based on execution.

Second, the execution is carried out based on orders from the Chief Justice as the leader. In this case, the Chief Justice has the authority to determine and lead the execution process. Its authority is further divided into two types: *ex officio* or formal authority and *bashchikking* or authority to make a decree of execution.

Third, the execution is carried out in accordance with the decrees that have been determined. A perfect and complete verdict influences the success of the execution. The perfection and completeness of the decision can be seen from the complete examination and evidence obtained and the strength of the legal considerations. In addition, the witnesses presented also came from good lawsuits.

The procedure for carrying out executions in the Industrial Relations Court is not explained in detail in Law Number 2 of 2004. Therefore, its implementation will refer to civil procedural law. In civil cases, executions are carried out by bailiffs and clerks with the Head of the District Court as the leader. Two witnesses will assist the bailiff and the clerk in the implementation. The person who can be selected as a witness, in this case, must meet two conditions, namely that he has entered the age of 21 years, and his trust can be held.

Based on HIR/RBg, the winning party in the Industrial Relations Court can file execution to the court by choosing one of the execution paths. The paths that can be chosen are real execution, execution by paying a certain amount of money, and execution by doing an action. In the real execution route, the winning party can apply (oral or written) to the Head of the District Court for the real execution. After receiving it, the Head of the District Court will summon the losing party. The goal is to give a warning so that the decision that has been determined is carried out within the next eight days.

If the warning issued by the Chief Justice of the District Court is not implemented. Its authority to issue a decision for the issuance of an order of execution (*bashchikking*) can be used in this case. Confiscation will be carried out on movable property owned by the losing party as much as a predetermined amount of money. If no movable object can be confiscated, then the immovable property can also be confiscated.

Furthermore, the execution path by paying a certain amount of money is also carried out in a manner that is almost similar to the real execution path. The first thing to do is to call the losing party to be given a warning for not carrying out the decision obligation voluntarily. After that, the Head of the District Court can make a decision to confiscate the execution. Then an order is issued to conduct an auction. After the auction order is issued, auction activities can be carried out. In the last stage, the money obtained from auction activities is handed over to the winning party.

The last path of execution is execution by acting. This execution also begins with making a request with the aim of nominalizing the decision that has been made into a certain amount of money. Furthermore, the losing party is summoned, and the nominal amount of money that must be paid is conveyed in order to replace the decision of the Industrial Relations Court, which he did not carry out voluntarily.

## **CONCLUSION**

Disputes stem from feelings of dissatisfaction of one party with the decisions made. If not resolved properly, the dispute can turn into a dispute. In the field of manpower, disputes or disputes often occur between workers/labor, employers, and trade/labor unions. The industrial relations mechanism is a means of legal protection against labor disputes. Law Number 2 of 2004 stipulates that legal protection can be carried out through the Bipartite, Tripartite, and Industrial Relations Courts (PHI). The results of this court's decision do not only stop in writing on paper, but there must be a follow-up from the losing party to carry out their obligations based on the demands that have been set.

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