DISPUTE SOLVING IN INDUSTRIAL RELATIONS BASED ON ACT NUMBER 2 YEAR 2004

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Abstract

Industrial relations dispute solving that managed in Act No.2 Year 2004 On Industrial Relations Dispute Solvingcan be solved by bipartite negotiation, conciliation, arbitration, mediation, and industrial relations dispute court. The principle of this matter is by putting negotiation first prior to other ways. As managed in Act No.2 Year 2004On Industrial Relations Dispute Solving everyone concerned are supposed to solve it in fast, fair, and cheap ways.

Abstrak

Penyelesaian perselisihan hubungan industrial yang diatur dalam UU No. 2 Tahun 2004 dapat diselesaikan melalui perundingan bipartit, konsiliasi, arbitrase, mediasi, dan pengadilan perselisihan hubungan industrial. Prinsip dari hal ini adalah mendahulukan negosiasi bipartit sebagai langkah awal sebelum menuju ke arah lain. Sebagaimana diatur dalam UU No. 2 Tahun 2004 semestinya setiap orang yang terkait dapat menyelesaikan dengan cepat, adil, dan murah.

INTRODUCTION

Conflict or different point of view are common things. Conflict can happened everywhere and afflict anyone with an interest. Even conflict in labor union cannot be separated from this labor organization daily work. Problem always arises and often get mixed up between organizational and personal one. Of course this also happened in other organizations or interest groups.

Some literatures mention that the driving factors of conflict among others are different idea and point of view, different goal, dispute in the way to reach goal, behaviour mismatch, negative influence from other party toward others' objective, competition, lack of cooperation etc.

Sociologically dispute can arise everywhere, in household environment, school, market, terminal, company, office etc. Psychologically dispute is emotion that influnce someone's relationship with other. Dispute is a common thing as it is human nature.

Dispute in working area or in company is inevitable. Dispute happens in the company environment is known as labor dispute or industrial relations dispute. Historically, labor dispute is a dispute between employer or group of employers with labor union or group of labor unions dealing with lack of understanding about working relations, working terms and conditions, or labor condition (Article 1 Section (1) letter C Act No.22 Year 1957 On Labor Dispute Solving). Based on Labor Minister Decree No.-KEP15.A/Men/1994 On Guidelines in Industrial Relations Dispute Solving and WorkingTermination in Company Level and Mediation, the term of labor dispute was changed into industrial relations dispute. Based on legislation Article 1 Number 1 Act No.2 Year 2004 On Industrial Relations Dispute Solving, that the different point of view causing dispute between the employer or group of employers and employee/labor or employee union/labor union about rights, interests, and working termination, and dispute of employee union/labor union only in one company.

Based on Article 2 Act No.2 year 2004 On Industrial Relations Dispute Solving it is managed that type of industrial relations dispute covers four kinds i.e.:

a. Dispute in rights
   Dispute in rights is dispute that occurs as one of the parties is not fulfilling the working agreement, company rules, labor agreement, or regulation.
b. Dispute in interests
   Dispute in interests is dispute arrising from the change of labor requirements or as a result of different understanding about working requirements and/or labor condition.
c. Dispute between employee union/labor union only in one company
   Dispute between employee union/labor union only in one company is dispute between employee union/labor union with other employee union/labor union only in one company as there is no same understanding about membership, implementation of rights and obligations to the union.
d. Dispute in work termination
   Dispute in working termination is dispute arrising from disagreement about working termination done by one of the parties.

Act No.2 Year 2004 On Industrial Relations Dispute Solving manages that dispute may be solved through court or out of court. Industrial relations dispute solvingputsforward deliberation to reach a consencus(win win solution) so that the production of goods and service process still continues normally. Solving through court is done through Industrial Relations Court. Industrial relations court is a special court that is built within the District Court which is authorized to examine, judge and decide against the industrial relations.

Industrial relations dispute solving according to Act No.2 Year 2004 On Industrial Relations Dispute Solving, besides being accessible through court can also through out of court way i.e. via bipartite negotiation, mediation, conciliation, and arbitration. Solving through bipartite negotiation, is a negotiation between employee/labor or Employee Union/Labor Union and the employer to solve

industrial relations dispute. This is different from bipartite cooperation institution as meant by Act No.13 Year 2003 On Employment, that Bipartite Cooperation Institution is a communication and consultation forum on matters dealing with industrial relations in a company which members are the employer and the Employee Union/Labor Union registered in responsible institution in employment or employee or labor elements.

PROBLEM FORMULATION

Based on above explanation so the problem formulation is: How is industrial relations dispute based on Act No.2 Year 2004 On Industrial Relations Dispute Solving?

DISCUSSION

1. Review of Industrial Relations

a. Understanding of industrial relations

The term of industrial relations derives from the word industrial relations, that is a development of term of labor relations or labor management relations. According on Sentanoe Kartonegoro, term of labor relations gives narrow impression as if it only dealing with employer and employee relations.[1]

Basically industrial relations problem covers a very wide aspects i.e. the aspects of socio culture, economic psychology, legal politic, and national defense and security; so that industrial relations is not only covers employer and employee, but also government and society in wide terminology. Therefore, the use of term 'industrial relations' is felt more appropriate than laboring relations.

The understanding of industrial relations based on regulation Article 1 Number 16 Act No.13 Year 2003 is a relationship system formed amongst the casts in goods and/or service production which consists of employer, employee/labor, and government elements, based on Pancasila values, Indonesian Constitution Year 1945. Based on above understanding we can describe the elements of industrial relations i.e.: the existance of industrial relations system, the casts including employer, employee/labor, and government; goods and/or service production.[2]

Industrial relations in Indonesia, based on Abdul Khakim, is different from the ones in other countries. The characteristics are:

1) Admit and believe that employee is not working only for the salary but as his devotion to his God, fellow people, society, nation and state.
2) Assume worker is not production factor but as dignified human.
3) See the employer and employee not in their different interests but that they have the same interest to develop the company.[3]

b. Industrial Relations Function

Industrial relations function meant here is each party's function in carrying out industrial relations i.e.: government, employee/labor or Employee Union/Labor Union, and employer.

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[1] Sentanoe Kertonegoro,1999, *Hubungan Industrial,Hubungan Antara Pengusaha dan Pekerja (Bipartit) dan Pemerintah (Tripartit)*,Jakarta,Yayasan Tenaga Kerja Indonesia,1999:14

[2] Asri Wijayanti,2009, *Hukum Ketenagakerjaan Pasca Reformasi*,Jakarta,Sinar Grafika, 2009:57

[3] Abdul Khakim,2003, *Pengantar Hukum Ketenagakerjaan Indonesia Berdasarkan Undang-Undang Nomor 13 Tahun 2003 (Edisi Revisi)*,Bandung,PT Citra Aditya Bakti, 2003:50

Based on Article 102 Secton (1) Act No.13 Year 2003 On Labor, the government's functions in carrying out industrial relations are: settling policy, providing service, monitoring, and taking action against breach of labor regulations.

Based on Article 102 Section (2) Act No.13 Year 2003 On Employment, the functions of employee/labor and Employee Union/Labor Union in carrying out industrial relations are:

1) Doing job as his obligation.
2) Keeping order for production continuity .
3) Expressing aspirations democratically.
4) Developing skill and expertise and participating in the company's development as well, and
5) Fighting for the welfare of the members and their families.

Afterwards based on Article 102 Section (3) Act No.13 Year 2003 On Employment, the function of employer in carrying out industrial relations are: creating partnership, developing business, enhancing working opportunity, and providing employee/labor welfare openly, democratically and fair.

c. Industrial Relations System

Generally there are five industrial relations systems, as follows:

1) Industrial relations system based on utility (utility system)

In this part the labor relations are managed such that the labor utility can be maximized. There is a policy of full employment of manpower. The labor is paid and guaranteed well if he provide his maximum strength. His strength is squeezed to gain maximum production.

2) Industrial relations system based on democracy (democratic system)

This system prioritizes consultation or discussion between labor and employer.

3) Industrial relations system based on humanity (human system)

This system is not really counting increased production and efficiency.

4) Industrial relations system based on life time commitment (life long commitment/life time employment)

This system exist in Japan. Labor tends to be loyal to the employer, in the company's profit and loss situation. Labor is highly discipline, dedicated hardworker. On the other hand the employer trats the labor as his child and family member, by giving many facilities.

5) Industrial relations system based on class struggle.

This system appears as Karl Marx's idea when there is a contradiction in capital owner class (capitalist). The more intense contradiction the faster it is setlled by destroying the capitalists by the hungry proletariat to demand justice.

d. Industrial Relations Tools

In carrying out industrial relations principle we need the same mental and social attitudes between employee, employer, and government; so that there is no place for opposing or oppressing attitudes by the strong toward the weak party.[4]

To embody the philosophy of industrial relationsin daily working relations we need absolute condusive atmosphere in the working environment. This atmosphere will be materialized if it is supported by means, such as:

1) Employee union/labor union

[4] Shamad,Yunus,1995, *Hubungan Industrial di Indonesia*,Jakarta,PT Bina Sumberdaya Manusia,1995:18

This is an organization formed from, by, and for worker/labor in or outside the company, that has the nature of free, open, independent, democratic, and responsible to fight, defend, and protect the right and interest of the worker/labor and his family.

2) Employer organization

This is an organization formed by Indonesian businessmen with the nature of democratic, free, independent, and responsible, especially in handling industrial and labor law in carrying out industrial relations to improve human resources quality as one of the main means to manifest social and economical welfare in the business.

3) Bipartite cooperation institution (LKS Bipartite)

This is a forum of communication and consultation about the matters dealing with industrial relations in a company, which members are employer and employee union/labor union registered in responsible institution in employment or employee or labor elements.

4) Tripartite cooperation institution (LKS Tripartite)

This is a communication, consultation, and discussion forum about the matters dealing with laboring, which members are employer and Employee Union/Labor Union, and government.

5) Company's regulation

This is the regulation made in written by the employer containing working requirements and company's code of conduct.

6) Collective labor agreement (PKB)

This is an agreement as a result of negotiation amongst employee union/labor union or some employee unions/labor unions registered in responsible institution in employment with the employer or some employers or businessman organization which contain working requirements, rights and obligations of both sides. Collective labor agreement is a very important supporting tool to materialize industrial relations, preserve and develop harmonized relations as PKB is a participation tool between employee/labor and employer.

7) Labor regulation

This is made participatively involving employee/labor and employer elements.

8) Industrial relations dispute solving institution

This is an industrial relations court built based on Act No.2 Year 2004 On Industrial Relations Dispute Solving. Industrial relations court is one of special courts in general court environment.

2. Review On Industrial Relations Dispute

a. Understanding of Industrial Relations Dispute

Based on Article 1 Number 22 Act No.13 Year 2003 On Labor and Article 1 Number 1 Act No.2 Year 2004 On Industrial Relations Dispute Solving, industrial relations dispute is a disagreement that lead to contention between employer or group of employers and employee/labor or employee unions/labor unionsdue to disagreement about rights, interest, and working termination and also disagrement amongst employee unions/labor unions only in a company.

b. Type of Industrial Relations Dispute

1) Based on law of labor literature, at first industrial relations dispute was separated into two types, i.e.:

a) Right dispute (rectsgeschillen)

This dispute occurs since one of the parties is not fulfilling the working agreement, company code of conduct, labor agreement or requirements in the regulations.

b) Interest dispute (belangengeschillen)

This dispute happened due to a change in labor requirements or due to disagrement on working requirements and/or labor circumstances.

2) According to Widodo and Judiantoro, based on the nature of the dispute they divide it itu two types, i.e.:

a) Collective labor dispute

This is dispute amongst employer and employee unions/labor unions because of disagreement about working relations, requirements and/or labor circumstances.

b) Personal labor dispute

This dispute is between employee/labor who is not a member of employee unions/labor unions and the employer.[5]

3) The provision of Article 2 Act No.2 Year 2004 On Industrial Relations Dispute Solving states that type of industrial relations dispute covers four types:

a) Right dispute

This dispute occurs because of the unfulfilled right, as the result of different implementation or interpretation toward statutory provision, working agreement, company code of conduct, or collective agreement (Article 1 number 2).

b) Interest dispute

This dispute happens in working relations as there is a disagreement about the making and/or changing of working requirement as stated in working agreement, or company code of conduct, or collective working agreement (Articel 1 number 3).

c) Working termination dispute

This dispute arrises a there is a disagreement about the working termination done by one of the parties (Article 1 number 4).

d) Dispute amongst employee union/labor union only in a company.

This is dispute amongst employee union/labor union with other employee union/labor union only in a company as there is a disagreement about membership, labor's right and obligation implementation (Article 1 number 5).

c) Principle of Industrial Relations Dispute Solving

The principles that must be held by all parties in solving industrial relations dispute are:

1) Must be implemented by the employer and employee/labor or employee union/labor union deliberately for consensus (Article 136 section (1) Act No.13 Year 2003 On Employment).
2) If the effort of deliberation for consensus failed, so the employer and employee/labor or employee union/labor union can solve the industrial relations dispute through a procedure regulated by the act (Article 136 section (2) Act No.13 Year 2003 on Employment).

d) Mechanism of Industrial Relations Dispute Solving

[5] Widodo Hartono dan Judiantoro,1992, *Segi Hukum Penyelesaian Perselisihan Perburuhan,*Jakarta,PT Raja Grafindo Persada, 1992:25-26

Act No.2 Year 2004 embraces the dispute solving through court and outside court.Industrial relations dispute solving puts forward deliberate for consensus (via win-win solution) so that the production process of goods and service running as it should.

1) Industrial Relations Dispute Solving through Bipartite Negotiation (Artible 3 – Article 7 Act No.2 Year 2004 On Industrial Relations Dispute Solving).

Every industrial relations dispute must be solved through bipartite negotiation first between the employer and employee within thirty (30) working days since the date of negotiation started. Within 30 working days if one of the parties refuses to negotiate or have conferred but reached no consensus, so this bipartite negotiation is considered failed so that one of the parties or both parties must record its dispute to the local responsible institution in employment by enclosing proof of bipartite negotiation efforts done. Upon receiving record from one of or all parties, the local responsible institution in employment must offer to all parties to choose the solving through conciliation or arbitrage. If all parties does not choose to solve through conciliation or arbitrage within seven days, so the local responsible institution in employment bestows the dispute solving via mediator. Every bipartite negotiation must be minuted that contained full name and full address of the parties, date and place of negotiation, main problem and reason of dispute, experts oppinions, conclusion or result of negotiation, and date and signature of all parties running the negotiation.

2) Industrial Relations Dispute Solving through Conciliation (Article 17 – Article 28)

The dispute solving through conciliation is done by conciliator after the parties filed a written request to the conciliator appointed and agreed by the parties. At the latest of seven working days after receiving written solving request, the conciliator must run a research on the case and the latest on the eight day must run the first negotiation. If agreement is reached through conciliation, agreement can be signed by all parties and witnessed by conciliator then registered in industrial relations court to get deed of proof of registration. If agreement cannot be reached so conciliator issues written advice to be submitted to all parties at the latest of ten (10) working days since the first conciliation trial. All parties are obliged to answer writtenly to conciliator saying agree or reject the written advice. The unanwered party will be considered rejecting the written advice. If all parties agree the written advice, conciliator must finish his assistance to the parties by issuing Joint Agreement at the latest in three working days since the written advice is agreed then registered in industrial relations court to get deed of proof of registration. Conciliator is obliged to finish his job at the latest in 30 working days since the case solving request received.

3) Industrial Relations Dispute Solving throughArbitrage (Article 29 – Article 54)

Industrial relations dispute solving through arbitrage is done by arbitrator based on written agreement of the disputing parties. Arbitrator must finis his arbitrage duty at the latest in 30 working days since the signing of arbitrator appointment agreement. Examination of dispute is done at the latest in three days since the arbitrator appointment agreement signed and by agreement of the parties arbitrator is authorized to prolong the time limit in solving industrial relations dispute once at the latest in 14 working days. The examination of arbitrator or panel or arbitrators is done in private except the disputing parties want the other way. In arbitrage trial, the disputing parties may be represented by a proxy with a special power of attorney. Industrial relations dispute solving by arbitrator begins with efforts to reconcile the disputing parties. If reconciliation reached, arbotrator or panel of arbitrators is obliged to issue Reconciliation Deed signed by the disputing parties and the arbitrator or panel of arbitrators, then register it in industrial relations court in district court in the territory where the arbitrator make the peace. If the peace effort fails, arbitrator or panel

of arbitrator continues the arbitrage trial. Arbitrage decision has legal power binding the disputing parties and this verdict is final and permanent. The arbitrage verdict will be registeredin industrial relations court in district court in the arbitrator's territory determine the verdict. Toward the arbitrage verdict one of the parties can apply cancellation to the Supreme Court at least in 30 working days since the arbitrage verdict. Industrial relations dispute that is or had been settled through arbitrage cannot be swung to court of industrial relations.

4) Industrial relations dispute solving through mediation (Article 8 – Article 16)

   Industrial relations dispute solving through mediation is done by mediator using examination of the case and mediation trial. If agreement is reached through mediation trial so agreement to be made and signed by the parties and witnessed by mediator and registered in industrial relations court to get deed of proof of registration. If agreement cannot be reached through mediation so mediator will issue a written advice. If the parties agree the written advice, mediator should have finished assisting the parties in making joint agreement at the latest three working days since the written advice agreed then registered in industrial relations court to get deed of proof of registration. Mediator will finish his duty at the latest 30 working days since delegation of case.

5) Industrial relations dispute solving through industrial relations court (Article 55 – Article 58).

   Industrial relations dispute solving through industrial relations court is started by filing lawsuit to industrial relations courtin district court where the territory covers the location of the employee/labor work. Filing lawsuit should be enclosed with the minutes of solving through mediation or conciliation, if not enclosed the judge must send back the lawsuit to the plaintiff. To the content of lawsuit, there is an obligation of the judge to examine via dismissal process.

   The case examination in industrial relations court is done in ordinary way or express way. The judge verdict is obliged to be handed over at the latest 50 working days since the first trial in an open trial for public. The industrial relations court's verdict about the dispute of right and working termination has a permanent legal power if cassation application is not filed to the Supreme Court at the latest 14 working days. Industrial relations court solving in the Supreme Court at the latest 30 working days.

We need to observe that the effort to solve outside the court happened to have connection with the settlement mechanism through court as regulated in Article 83 Section (1) Act No.2 Year 2004 On Industrial Relations Dispute Solving that says: "Filing lawsuit should be enclosed with the minutes of solving through mediation or conciliation, so judge of Industrial Relations Dispute court is obliged to send back the lawsuit to the plaintiff".

COVER

The settlement of industrial relations disputes stipulated in Law No. 2 of 2004 is an improvement over the previous regulation, namely Law No. 22 of 1957. In Law No. 2 of 2004 provides arrangements for disputes between trade unions / trade unions in only one company, which was not previously regulated in Law No. 22 of 1957.

The principle of settlement of industrial relations disputes according to Law No. 2 of 2004 prioritizes deliberations for consensus through bipartite negotiations, as the first step that must be taken by the disputing parties before pursuing other mechanisms. Settlement of industrial relations disputes according to Law No. 2 of 2004 is expected to provide prospective expectations for the

dissenting parties to obtain a quick, fair and cheap settlement. In its application, Law No. 2 of 2004 still requires further study for the perfection of the rule itself.

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