REORGANIZING THE MECHANISM OF SETTLING LABOR RELATIONS DISPUTES*

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Abstract

Law No. 2 of 2004 was enacted to organize the mechanism of the settlement by involving the government (executive) through mediation and litigation. However, a number of complaints may have indicated some weakness in that mechanism. The objective was to identify the substance of Law No. 2 of 2004, which needs to be improved by formulating the ideal model. The data is consisted of primary and secondary data, which are gathered by using questionnaires to the industrial community in Medan and Deli Serdang Regency. The result showed that quick, accurate, fair, and inexpensive principles have not been implemented yet. Therefore, it is necessary to reorganize the mechanism of settling labor relations disputes.
***Keywords**: bipartid forum, dispute mechanism, labor relations, mediation, PHI.*

Intisari

Undang-Undang Nomor 2 Tahun 2004 tentang Penyelesaian Perselisishan Hubungan Industrial ditetapkan untuk mengatur mekanisme penyelesaian yang melibatkan pemerintah (exekutif) melalui mediasi dan litigasi. Namun, sejumlah keluhan dapat menunjukkan kelemahan dalam mekanisme tersebut. Tujuannya adalah untuk mengetahui isi dari Undang-Undang Nomor 2 Tahun 2004 tentang Penyelesaian Perselisishan Hubungan Industrial, yang butuh untuk dikembangkan dengan merancang model ideal. Data terdiri dari data primer dan sekunder, yang dikumpulkan menggunakan kuisioner untuk komunitas industri di Medan dan Kabupaten Deli Serdang. Hasil menunjukkan bahwa prinsip cepat, akurat, adil, dan murah belum diimplementasikan. Maka, sangat diperlukan untuk mengatur ulang mekanisme penyelesaian sengketa hubungan kerja.
Kata Kunci: forum bipartid, mekanisme penyelesaian perselisihan, hubungan kerja, mediasi, PHI.

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A. Research Background

In its implementation, Law No. 2 of 2004 on Settlement of Industrial Relations Disputes (latter called UU PPHI), which has been effective for more than a decade, arouses many legal problems, either formal or material, faced by the industrial community. It seems that the settlement of labor relations disputes still searches for its ideal form. Since 2015, the Bill of Amendment on UU PPHI, proposed by Committee IX of the Indonesian House of Representatives, has been listed as one of the priority in National Legislation Programs of the Legislative Body. This case has allowed for an academic study to determine an ideal model of the mechanism of settling labor relations disputes.

A research was conducted by Suherman, *et.al.,* has found that the problem concerning the formal law in UU PPHI was the mechanism, which used civil procedural law, is contrary to what has been expected. It is not a quick, accurate, righteous, and inexpensive administration of justice, specifically concerned with the cost of litigation in Industrial Relations Dispute (latter called PHI), which is considered by workers as expensive.[1] It is expensive because they would spend a lot of money on the cost of administration when filing a complaint, verification, and decision-making based on civil procedural law.

These problems need to be responded to figure out a pattern by formulating an ideal mechanism, which has been expected by the industrial community (workers, employers, and Government) to settle labor relations disputes that may bring positive implications in the industrial sector. This research is expected to provide help, as in input, for the Government, especially the North Sumatera Provincial Government. In this case, Medan and Deli Serdang Regency have been selected as the research location.

Some of the problems, which related to UU PPHI, are limited by four classifications. Those are disputes on rights, disputes on dismissal, disputes on interests, and disputes among Trade Unions/ Workers. All of these disputes may happen to all formal sectors. In the industrial sector, there is also the non-formal sector, which needs the law to deter when the disputes on rights and dismissal occurred. People often complain about the mechanism made under UU PPHI. UU PPHI prefers settling conflict from litigation at the court, to non-litigation by mediation or any other alternative dispute resolutions.

Problems faced by UU PPHI, such as the mechanism which uses civil procedural law at the court, are not as expected by people, especially the parties in disputes. The procedure is ineffective, inaccurate, unfair, and expensive. The concept made under UU PPHI should be effective, accurate, fair, and inexpensive. For example, the cost for litigation procedure before PHI court, by workers' parties is being assumed expensive because of administrative needs held by the court. The process from the beginning to the decision reading at the court is quite expensive.

B. Research Method

This research used the normative-empirical method, which analysed the implementation of factual positive law in certain juristic facts, in order to make sure whether the result on the implementation of *in concreto* juristic fact is in accordance with the legal provisions. This research was conducted through two stages: **first**, by analysing the normative law (Labor Law); and **second**, by analysing empirical or applied law (implementation) of the juristic fact.

The data analysis used in this research is qualitative and quantitative data. The qualitative data is consists of primary and secondary data. The secondary data was collected by conducting library research; gathering several legal provisions as primary legal materials, the academic manuscript

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[1] Suherman Toha, *et. al.,* 2010, *Laporan Akhir Penelitian Hukum Tentang Penyelesaian Perselisihan Hubungan Industrial*, Badan Pembinaan Hukum Nasional, Jakarta.

of the Bill of Amendment on Law No. 2 of 2004; and tracing previous researches related to this research, in the forms of books, journals, and other scientific writings. The primary data was gathered by using questionnaires, which were distributed to the trade unions, attorneys, and business people. *Ad hoc* judges and former *ad hoc* judges of PHI were specifically selected to guarantee their experience on the implementation of UU PPHI. The questionnaires were distributed to gather opinions and perceptions regarding the research subject. There were 65 respondents in total, with 18 respondents from the trade union, 11 respondents from the business people, 28 respondents from the attorneys, and 8 respondents from the PHI *ad hoc* judges and/or former *ad hoc* judges. The quantitative data was gathered by tabulating respondents' answers on their satisfaction levels and evaluating bipartite forum, mediation, and PHI, mainly related to timeframe, professionalism, and cost.

This research took place in Medan and Serdang Bedagai. These locations were chosen because they are two of the largest industrial areas in North Sumatera, and Medan is the provincial capital where the PHI court is located. Interviews were also conducted with the senior attorneys who have experienced Law No. 22 of 1957 regarding Labor Dispute Resolution and UU PPHI with the PHI *ad hoc* judges at Medan District Court, to find the principal problems in legal practices. After the data were collected, the author invited the stakeholders in a Focus Group Discussion (FGD). The FGD was aimed to gather input or specific information and focus on the research problems, while the data were being analysed qualitatively.

C. Research Result and Analysis

The mechanism of settling labor relations disputes is stipulated in UU PPHI, which states that on the first stage, the dispute should be settled in a bipartite forum. This stage is expected to settle a dispute by consensus. The result of settling the dispute in a bipartite forum can be seen in the following Table:

Table 1.

Result of Settlement in Bipartite Forum (N=65)[2]

Bipartite Result	Total
Fail to get Agreement	58
Succeed in getting Agreement	7
TOTAL	65

Source: Processed by the author, 2019.

Concerning the problem of bipartite forum's effectiveness, when it is conversed to figures with the scale from 1 to 5, respondents' assessment can be seen in the following Table:

Table 2.

Assessment on the Effectiveness of Bipartite Mechanism

Score (Figure)	Number of Respondents
1	9
2	16
3	27
4	7
5	4
No Answer	2
TOTAL	65

Source: Processed by the author, 2019.

A dispute that fails to be settled in a bipartite forum usually requested to be settled by mediation. In this case, conciliation and arbitration are not popular in these two regions. The data indicate that Medan and Deli Serdang Regency do not have any conciliator and arbiter on manpower appointed by the Minister of Manpower. A request for mediation has to be immediately responded by the mediator on manpower. Article 10 of UU PPHI states that it shall be no more than seven workdays after the report on the dispute is received. The mediator has to study the facts of the case and immediately holds a meeting for mediation. However, facts on field concerning the starting period of examination on the dispute in the mediation level can be seen in the following Table:

Table 3.

Period of Starting the Meeting on Dispute in the Level of Mediation

Respondents' Answers	Total
a. Fewer than 7 days	13
b. 7 days	13
c. More than 7 days	39
TOTAL	65

Source: Processed by the author, 2019.

The period, stipulated in UU PPHI for settling dispute by mediation, is 30 workdays, commencing on the reception of dispute settlement. The average time needed to settle a labor relations dispute by mediation can be seen in the following Table:

Table 4.

Average Time of Settling Dispute by Mediation

Respondents' Answers	Total
a. Fewer than 30 days since Dispute Settlement is received	25
b. 30 days since Dispute Settlement is received	16
c. More than 30 days since Dispute Settlement is received	21
d. No Answer	3
TOTAL	65

Source: Processed by the author, 2019.

When mediation fails, mediator issues a written suggestion presented to stakeholders for no later than 10 (ten) workdays since the first meeting of mediation, as stipulated in Article 13, paragraph 2, letter b of UU PPHI. Concerning the effectiveness of the mediation mechanism, respondents' answers can be seen in the following Table:

Table 5.

Assessment on the Effectiveness of Mediation Mechanism

Score (Figure)	Total
1	7
2	10
3	35
4	10
5	1
No Answer	2
TOTAL	65

Source: Processed by the author, 2019.

When a dispute fails to be settled by mediation and mediator's suggestion is not accepted, it can be filed or registered to PHI in the district court of the provincial capital, the Medan District Court. Article 89 of UU PPHI, which regulates the standard examination procedure, states that not later than 7 (seven) workdays after the verdict of the panel of judges is pronounced, the presiding judge has to hold the first court session. In practice, however, it is not in accordance with the prevailing regulations. The time needed to hold the First Court Session in PHI can be seen in the following Table:

Table 6.

Time for Holding the First Court Session in PHI

Respondents' Answers	Total
Fewer than 7 work days since the Verdict of the Panel of Judges is pronounced	7
More than 7 work days since the Verdict of the Panel of Judges is pronounced	29
No later than 7 work days since the Verdict of the Panel of Judges is pronounced	23
No Answer	6
TOTAL	65

Source: Processed by the author, 2019.

The period of settling disputes in PHI, as stipulated in Article 103 of UU PPHI, is 50 (fifty) days, commencing from the first court session. During this period, the process consists of claim, response, rejoinder, and so on. The period of settling a dispute can be longer when some witnesses are absent (summon can be done twice) so that the court session will be prolonged. In reality, the

period on coming to the verdict of PHI can be seen in the following Table:

Table 7.

Period Needed to Come to the Verdict of PPHI

Respondents' Answers	Total
No later than 50 work days since the first Court Session	27
50 work days since the first Court Session	29
Fewer than 50 work days since the first Court Session	4
No Answer	5
TOTAL	65

Source: Processed by the author, 2019.

The settlement of a labor relations dispute in PHI takes no later than 50 workdays. This period is a parameter for the state on knowing whether the settlement process has complied with the quick principle as stipulated in UU PPHI. People's perception on the implementation of this principle when settling labor relations disputes can be seen in the following Table:

Table 8.

Perception on Quickness Principle in the Process of Settling Labor Relations Disputes in PHI

Score (Figure)	Total
1	5
2	14
3	28
4	9
5	5
No Answer	4
TOTAL	65

Source: Processed by the author, 2019.

The settlement of a dispute by using the bipartite forum, mediation/conciliation/arbitration, and PHI court, as stipulated in UU PPHI, is an effort to achieve justice for all parties (workers and employers). Respondents' opinion on the existence of the mechanism can be seen in the following Table:

Table 9.

Mechanism of PPHI in Encouraging the Achievement of Justice

Score (Figure)	Total
1	9
2	8
3	22
4	13
5	10
No Answer	3
TOTAL	65

Source: Processed by the author, 2019.

The principal policy in labor law is to protect the weak (workers/laborers) from the arbitrariness of their employers/business people, which can occur in labor. The purpose is to provide legal protection and to create social justice.[2] To quote Geoffrey Kay and James Mott:[3]

> "The main object of labor law has always been, and I venture to say will always be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the labor relationship. […] It is an attempt to infuse law into a relation of command and subordination"

The settlement of disputes using bipartite forum is specifically regulated in Article 4, paragraph 1 of Ministry of Manpower and Transmigration of the Republic of Indonesia Regulation No. PER.31/MEN/XII/2008 (latter called Manpower and Transmigration Ministry Regulation No. PER.31/MEN/XII/2008). This regulation regulates the stages of negotiation in bipartite forum. When one

[2] Agusmidah, 2007, *Politik Hukum Ketenagakerjaan Berdarsarkan Peraturan Perundang-Undangan,* Dissertation, University of Sumatra utara, Medan, p. 17.

[3] Geoffrey Kay and James Mott, 1982, *Political Order and the Law of Labor*, the Mamillan Press, Ltd., London, p. 112. Also in Claire Kilpatrick, "Has New Labor Reconfigured Labor Legislation?", *Industrial Law Journal*, Vol. 32, September 2003. p. 137.

party is not willing to continue the negotiation, other parties or both parties may sign up their dispute to the authority that deals with manpower in the regency/town, where the workers/laborers work, even though the process is fewer than 30 (thirty) work days. When the 30 (thirty) workdays are over and the negotiation still does not gain a meeting point, it can still be continued provided that both parties agree to do it. Unachieved timeframe as stipulated by the law was also delivered in the FGD as conveyed by labor union.

Table 1 indicates that according to the respondents, in general, negotiation in bipartite forum is unable to gain 89.2% of overall agreement. The statement is strengthened by the Table 2, which shows respondents' assessment on performance of bipartite forum: of all the 65 respondents (two of them abstained), 48 of them pointed out that negotiation in bipartite forum is effective.

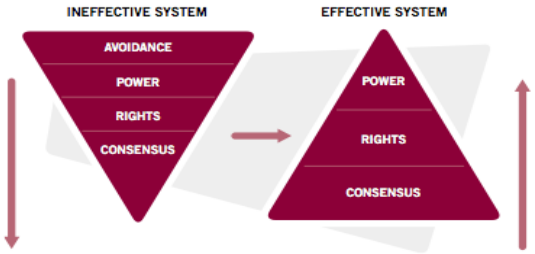
A bipartite mechanism, in the form of negotiation/consensus, can be successful when parties in dispute (workers/laborers versus employers) are aware of the importance of achieving a win-win solution. In general, there are three models in labor, according to Bram Peper and Reynert.[4] They are *harmonie arbeidsoverhoudingen* model, *colitie arbeidsoverhoudingen* model, and *conflict arbeidsoverhoudingen* model. According to Wiyono *et.al.*, Indonesia specifically follows *coalitie arbeidsoverhoudingen* model.[5] In this model, any dispute will be settled by consensus of opinion first. If the negotiation fails to achieve consensus, which means that it cannot be settled yet, then it shall be settled by performing conflict method through litigation.

The International Labor Organization (ILO) stated that an effective model for settling a dispute is to use a consensus approach before using a conflict model through litigation. This next Picture explains that, according to ILO, there are 4 (four) approaches on settling labor relations disputes: *Avoidance,* in which one of the parties fails to face a dispute; *Power,* in which one of the parties uses coercion to force the other party to do what he wants; *Rights*, in which one of the parties uses the independent standard of right or justice through formal judicial administration to settle a dispute; and *Consensus,* in which one of the parties attempts to reconcile or come to an agreement, to compromise, or to accommodate a position or need which is demanded.

The effective and ineffective systems are described in the following forms:

Picture 1.

Approaches in Settling Labor Relations Disputes According to ILO



Source: International Training Center of the International Labor Organization, 2013

UU PPHI placed the bipartite forum as the initial mechanism that parties in dispute must use, although no sanction can be imposed on those who oppose negotiating. Rejecting an offer to negotiate can be done explicitly or by not attending the negotiation. Article 3, paragraph 2 of the Manpower and Transmigration Ministry Regulation No. PER.31/MEN/XII/2008 only gives an instruction that if one of the parties in dispute does not want to be invited to a negotiation, whereas the invitation is done in the written form twice in succession and still the other party rejects them or does not give any response, the dispute can be signed up to the local agency that is in charge of manpower by

[4] Aloysius Wiyono, *et. al.*, 2014, *Asas-asas Hukum Perburuhan*, PT Raja Grafindo Perkasa, Jakarta.
[5] *Ibid.*

enclosing the evidence of the invitation to have the negotiation.

The next stage, which can be performed if the bipartite forum fails to meet an agreement, is involving mediator(s). Mediation is the most common model used in the two research areas since there is no conciliator and arbiter on manpower available in these two areas. The regulation of mediation procedure is stipulated in the Minister of Manpower and Transmigration Decree No. 17/2014, which amended the Minister of Manpower and Transmigration Decree No. KEP.92/MEN/VI/2004 on Mediator Appointment and Dismissal and Mediation Procedure. As a third party, a mediator plays a passive role (if viewed from the characteristics of mediation in general). He is merely a spokesman for both parties. Besides being passive, a mediator does not have any right or authority to give input, let alone to decide a dispute.[6]

Table 5 indicates that 70.8% of the respondents thought that mediation is still considered as the effective mechanism of settling disputes. It is because the mediator is an employee at the Manpower Agency who understands the materials of Labor Law. Therefore, in general, all disputes will be included in the stage of mediation.

According to the FGD submitted by Manpower Agency of Medan, the Social and Manpower Agency of Medan only has 9 (nine) mediators while disputes which will be handled each year reach hundreds as they can be seen in the following Table:

Table 10.

Labor Relations Disputes in Medan in the Period of 2014-2015

No.	Types of Dispute	Number of Cases		Result of Mediation	
		2014	2015	2014	2015[7]
1.	Disputes in Dismissal	198	97	Suggestion: 100 cases Mutual Agreement: 98 cases	Suggestion: 57 cases Mutual Agreement: 40 cases
2.	Disputes in Right	17	3	Suggestion: 9 cases Mutual Agreement: 8 cases	Suggestion: 1 case Mutual Agreement: 2 cases
3.	Disputes in Interest	8	3	Suggestion: 8 cases Mutual Agreement: -	Suggestion: 3 cases Mutual Agreement:-
4.	Disputes among Trade Unions/Workers	0		Suggestion: - Mutual Agreement: -	
	Total :	223	103		

Source: Processed by the author, 2019.

It was also stated in the FGD that there were only 4 (four) mediators in Deli Serdang Regency, while disputes which are handled each year reach hundreds as can be seen in the following Table:

[6] Akbar Pradima, "Alternatif Penyelesaian Perselisihssan Hubungan Industrial di Luar Pengadilan", *Jurnal Ilmu Hukum,* Vol. 9, No. 17, Februari 2013.

[7] Until March, 2015

Table 11.

Labor Relations Disputes in Deli Serdang Regency in the Period of 2015-2016

No.	Types of Dispute	Number of Cases		Result of Mediation	
		2015	2015	2015	2016
1.	Disputes in Dismissal	139	135	Suggestion: 52 cases	Suggestion: 87 cases
2.	Disputes in Right	48	25	Mutual Agreement: 88 cases Dossiers returned: 2 cases Bipartite Stage: 2 cases	Dossiers returned: 3 cases In the process: 9 cases
	Disputes in Interest	0	1	Suggestion: 1 case Mutual Agreement: -	Suggestion: case Mutual Agreement: -
	Disputes among Trade Unions/ Workers	0	0	Suggestion: - Mutual Agreement: -	
	Total	185	161		

Source: Processed by the author, 2019.

Meanwhile, there are only 15 (fifteen) mediators in the Manpower and Transmigration Agency of North Sumatera Province. This number is irrelevant to the disputes, which are handled each year.

Table 12.

Labor Relations Disputes in North Sumatera Province

Types of Dispute	Year		
	2014	2015	2016
Dismissal	141	191	122
Right	9	23	0
Interest	0	0	0
Among TU/W	0	0	0
Total	150	214	

Source: Processed by the author, 2019.

On the next stage, when negotiation by mediation fails and parties in dispute or one of them refuses to accept the suggestions from the mediator, the dispute shall be signed to the PHI in Medan District Court. This litigation process shall be settled for no more than 50 (fifty) days after the first court session. The result of interviews with the trade unions, attorneys, and *ad hoc* judges of PHI reveals that the settlement of disputes through the PHI court session usually takes more than 50 days, or even longer than that, because judges' verdicts in PHI for the types of dispute on rights and dismissal can be appealed to a higher court to Supreme Court. Article 110 of UU PPHI states that disputes on rights and dismissal can be appealed to the Supreme Court for no more than 14 (fourteen) workdays since the verdict is pronounced, for the litigants that are present or absent since the data or the information about the verdict is received.

Concerning disputes on interest and disputes among trade unions/workers, these two types of disputes cannot be appealed to a higher court. They are final and conclusive in the District Court level of PHI, as stipulated in Article 109. The verdict of PHI in the District Court is final and conclusive for disputes on interest and among trade unions/workers in a company. Previous research found out that most of the cassation appeals and judicial reviews were done by business people. It indicates that business people, who have to take responsibility by the verdicts of PHI, attempt to search for loopholes by playing for time with a legal remedy.[8]

[8] Muhammad Isnur, *et. al.*, "Membaca Pengadilan Hubungan Industrial di Indonesia", *Research Paper*, Research on Supreme Court Decision in the Scope of Industrial Relations Court 2006-2013, LBH Jakarta, September 2014.

Abdul Hakim points out that there is no quick principle in practice, even when this law cut off legal remedy (no cassation appeal).[9] However, the process will take a long time because the court session schedule is held once a week. Therefore, it is estimated that it would be 6 (six) months to one or three years to 5 years. The result from the previous research revealed that UU PPHI did not comply with the expectation of workers/laborers of quickly, accurately, righteously, and inexpensively labor relations disputes settlement.

The draft of the academic transcript of UU PPHI amendment bill, organized by the team of experts at the House of Representatives, stated some weaknesses in the process in PHI as stipulated in UU PPHI. **First**, the formality of the settlement mechanism is too formal that workers/laborers tend to feel that it is unaffordable to go to court or litigation in PHI. Joko Ismono, a former judge of PHI, Surabaya, revealed the truth of this fact.[10] The legal evidence on the formality in PHI is a significant number of claims from workers/laborers that said "NO" (cannot be accepted), which means the formality of process cannot be understood by workers/laborers.

Second, the settlement process takes a long time and is very expensive that workers/laborers have to spend a lot of time and money. **Third**, the mechanism of pure civil procedural law has caused them to spend a lot of money. It also needs specific skills if faced with this system of conflict settlement, whereas they will be in a weak position.

The settlement of labor relations disputes should give a sense of justice by a quick and inexpensive process. Therefore, the principal policy should be reorganized. It would become the network and reference up to the articles, which can be inserted in a law. For example, the establishment of dispute types are as follows: dispute on rights, dispute on dismissal, dispute on interests, and dispute among trade unions. Labor relations disputes consist of only two types: dispute on rights and dispute on interests. Besides that, reorganizing the types of dispute is intended to be consistent with the concept defined as an industrial relations dispute in UU PPHI.

The settlement of dispute on interests is conducted through the non-litigation settlement model by negotiation, either involving mediator or not. For manpower issues, the arbitration model will be more effective if the negotiation involves a mediator because the decision will be final and conclusive. Dispute on right means normative right, work contract, or joint work contract which are not performed can be settled by litigation, in which sanction can be imposed on those who did a default or violated the law.

D. Conclusion

Bipartite and mediation as mechanisms of settling labor relations disputes, which prioritize social dialogues and consensus, are still regarded as accurate. However, they will become ineffective if one of the conflicting parties refuses the offer to perform negotiation in the bipartite forum since there is no sanction for the refusal. Meanwhile, in a mediation process, conciliation and arbitration of manpower and the lack of human resources becomes an obstacle themselves. Therefore, reorganization is necessary in order for a consensus-based model of the mechanism to settle disputes can be effective. Thus, quick, accurate, righteous, and inexpensive principles can be achieved.

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[9] Abdul Hakim, "Seminar Nasional P3HKI, Konsepsi Perubahan Substantif UU No. 2 Thn 2004: Menciptakan Peradilan", *Seminar Powerpoint*, University of Muhammadiyah Surabaya, Surabaya, 17 September 2016.

[10] Joko Ismono, "Hukum Acara PHI Catatan dari Ruang Sidang", *Paper*, P3HKI National Seminar on UU PPHI, Surabaya, 17 September 2016.

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