



## Legal Results of Tripartite Mediation Termination of Employment Without Including Employment Service Provider Companies

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### **Abstract**

Industrial Relations Mediation, hereinafter referred to as mediation, is the settlement of rights disputes, disputes of interest, disputes concerning termination of employment, and disputes between trade unions / labor unions in only one company through deliberations mediated by one or more neutral mediators. The issues discussed are (1) How is the implementation of Industrial Relations Dispute Settlement through tripartite mediation at the Padang City Manpower and Industry Office? (2) What is the legal consequence of tripartite mediation due to Termination of Employment without involving workers' service providers? This writing was made in the form of normative juridical writing, coupled with a sociological juridical approach as a support. In principle, the implementation of tripartite mediation in the Settlement of Industrial Relations Disputes by the Department of Labor and Industry of the City of Padang has supported its functions as mandated by the Law. According to Minister of Manpower and Transmigration Regulation No.19 of 2012 in a Work Agreement on the Provision of Workers' Services, three) legal subjects, namely employer companies, worker service providers and workers / laborers. Exclusion of workers service providers,

**Keywords:** Tripartite Mediation; Employment; Department of Labor and Industry

### **Introduction**

The legal relationship between workers and employers is arranged in such a way by the Government through legislation in order to create a harmonious relationship between them. But in reality, even though it is regulated, there is still the possibility of industrial relations disputes. According to the Manpower Law Article 1 number (22), what is meant by industrial relations disputes is differences of opinion which result in conflict between employers and workers / laborers / labor unions due to rights disputes, disputes of interest, and disputes regarding termination of employment and disputes between workers / labor unions in only one company. Whereas according to the Industrial Relations Dispute Settlement Act,

As stipulated in the Industrial Relations Dispute Settlement Act, the Industrial Relations Dispute Settlement process can be pursued through two channels, namely through the court and outside the

court.<sup>1</sup> Settlement of disputes through the court (litigation) is the settlement of disputes between the parties conducted through examination before a judge in a judicial institution. The Judicial Process (litigation) is the longest and most commonly used method of dispute resolution in resolving disputes, both public and private disputes.

Non-litigation dispute resolution is a mechanism for resolving disputes outside the court and does not use a formal legal approach. Non-litigation dispute resolution is also known as Alternative Dispute Resolution.<sup>2</sup> In resolving disputes, disputes or conflicts can be done in various ways to obtain agreement. Dispute resolution can be done cooperatively by both parties and can be assisted by others or third parties, which are neutral in nature.<sup>3</sup> One form *Alternative Dispute Resolution* is mediation, in the Big Indonesian Dictionary, the word mediation is given as the process of involving a third party in settling a dispute as an advisor.

Explanation of mediation from the linguistic side (etymology) places more emphasis on the existence of a third party that bridges the disputing parties to resolve the dispute.<sup>4</sup> Mediation in nature is aimed at accelerating and simplifying the process of resolving disputes that occur between the parties to the dispute. The birth of mediation is an alternative dispute resolution through institutions other than the judiciary.

Compared to dispute resolution through the courts, mediation as a form of dispute resolution has strengths so that mediation becomes one of the options that can be utilized by those who are in dispute.<sup>5</sup> The process of resolving disputes through mediation is not trapped in forms of formalism, carried out in a closed and confidential manner, so that dispute resolution through mediation becomes a special attraction for certain parties. Through mediation the parties can be more flexible in finding solutions to solve their problems without having to be trapped using language or legal terms, the parties can discuss various aspects or sides of their disputes, not only legal aspects, but also other aspects, mediation results in a win-win (win-win) solution for the parties, besides mediation is a relatively inexpensive and not time-consuming process of secession resolution compared to litigation or litigation in court. So,

In the case of industrial relations disputes, in the Industrial Relations Dispute Settlement Act the procedure and process of Industrial Relations Dispute Settlement have been determined. Settlement outside the court is a stage of settlement that is mandatory.<sup>6</sup> In addition, the presence of mediation makes better choices in industrial relations disputes, between employers and workers invited to sit together with the help of a third person whose mediation is called "Mediator". The mediator is an intermediary (liaison, intermediary) for the parties to the dispute.<sup>7</sup>

In accordance with Article 102 paragraph (1) of the Manpower Act states that: "In carrying out industrial relations, the government has the function of setting policies, providing services, carrying out supervision, and taking action against violations of labor laws".

District / city service is the agency responsible for the district / city employment. Government affairs in the field of manpower are carried out by the Manpower Office, one of the tasks being in the case of Industrial Relations Disputes Settlement, specifically the Termination of Employment as a mediator in tripartite negotiations between workers and employers.

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<sup>1</sup> Khairani, Introduction to Labor and Labor Law, Raja Grafindo Persada, Depok, 2018, p.146

<sup>2</sup> Frans Hendra Winata, Dispute Resolution Law, Sinar Grafika, Jakarta, 2012, p. 25

<sup>3</sup> Akbar Pradima, "Alternative Settlement of Industrial Relations Disputes Outside the Court", DIH, Journal of Legal Studies, February 2013, Vol. 9, No. 17, p.2

<sup>4</sup> Syahrizal Abbas, Mediation (In Sharia Law, Customary Law and National Law), Cet. 2nd, Kencana, Jakarta, 2011, p.3

<sup>5</sup> Takdir Rahmadi, Mediation of Dispute Resolution through Consensus Approach, Cet. Second, Rajawali Pers, Jakarta, 2011, p.21

<sup>6</sup> Akbar Pradima, Op.Cit, p.3

<sup>7</sup> Ismail Nawawi, Industrial Conflict Management, Inpress, Surabaya, 2002, p.41

According to Article 1 paragraph (11) of the Law on the Settlement of Industrial Relations Disputes "Industrial Relations Mediation, hereinafter referred to as mediation, is the settlement of rights disputes, conflicts of interest, termination of employment disputes, and disputes between trade unions / labor unions in only one company through deliberation mediated by one or more neutral mediators ", whereas the definition of Mediator according to Article 1 paragraph (12) of the Act on Settlement of Industrial Relations Disputes, "Mediator of Industrial Relations," hereinafter referred to as Mediator, is an employee of a government agency responsible for manpower who fulfills the requirements of being a Mediator stipulated by the Minister to be in charge of conducting mediating and having the obligation to give written recommendations to the disputing parties to settle rights disputes, disputes of interest, disputes over termination of employment, and disputes between trade unions / labor unions in only one company ".

In the initial stage it is required to take a bipartite mechanism or negotiation negotiations which is a bargaining process between workers and employers to reach an agreement. According to Suyud Margono, negotiation is a two-way communication designed to reach an agreement when both parties have the same and different opportunities.<sup>8</sup> But in fact the workers and employers who are not willing to budge with it are unable to resolve this dispute. Because of the failure of these efforts, a tripartite or mediation mechanism was used.

In the event that bipartite negotiations fail, one or both parties register their dispute with the agency responsible for local manpower by attaching evidence that settlement efforts through bipartite negotiations have been made. If the evidence of settlement efforts through bipartite negotiations is not attached, the agency responsible for labor will return the documents to be completed within 7 (seven) working days from the date of receipt of the file return, and after receiving the records from one or the parties, the agency responsible for local employment must offer the parties to agree to choose a settlement through conciliation, mediation or arbitration.<sup>9</sup>

In the event that an industrial relations dispute settlement agreement is reached through mediation, a joint agreement is signed by the parties and witnessed by the mediator and registered at the Industrial Relations Court at the District Court. Whereas in the event that an industrial relations dispute settlement agreement is not reached through mediation, the mediator shall issue a written recommendation as stipulated in Article 13 paragraph (1) and (2) letter (a) of the Act on Industrial Relations Dispute Settlement, in the event that an Settlement Settlement agreement is not reached Industrial Relations through mediation, the Mediator issues written recommendations in the form of minutes of settlement through mediation ".

That in an industrial relations dispute between Busman and the Elnusa Petropin Limited Liability Company, arises due to Termination of Employment due to entering retirement age, but the Company has not paid severance pay, years of service awards, and other rights compensation money since the termination of the Company on July 21, 2016.

Based on the description above, one of the disputes which will be discussed in detail is the termination of employment relationship. Disputes over Termination of Employment may result in the employer or employer not paying severance pay and / or appreciation for years of service and compensation money which is an obligation of the employer or employer that must be given to workers or laborers. As a result of employers or employers who do not pay severance pay and or appreciation money for years of service and compensation money have violated labor freedom, namely receiving wages as a fundamental right of workers.

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<sup>8</sup> Suyud Margono, ADR (alternative dispute resolution) and Arbitration, Ghalia Indonesia, Bogor, 2004, p.49

<sup>9</sup> <http://www.hukumtenagakerjan.com/perundingan-bipartit/perundingan-bipartit-antara-pengusaha-dan-peng//>.

Busman workers are dismissed based on a letter from the Kopenusa Limited Liability Company Number L9.3180K-2016,874 dated July 21 regarding the termination of the Employment Relationship to the employees of Brother Busman, this is in Recommendation Number 563 / 44.26 / SOSNAKER / 2016. The mediator at the Padang City Manpower and Industry Office in 2016, named the Padang City Manpower Social Service, only called Busman Workers and Elnusa Petropin Limited Companies as Employers, but not Kopenusa Limited Companies as Worker Providers, this can be seen from Recommendation Number 563 / 44.26 / SOSNAKER / 2016 and Minutes of Mediation Negotiations dated October 4, 2016.

In the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 Regarding the Conditions for Submitting Part of Jobs to Other Companies, hereinafter written "Regulation of the Minister of Manpower and Transmigration No.19 of 2012" it is explained that there are 3 (three) parties namely the employer company, the Company workers / labor providers and workers / laborers. Article 66 paragraph (2) letter (c) states that "the protection of wages and welfare, conditions of work, and disputes arising are the responsibility of workers 'service providers", it can be concluded that the workers' service providers are the parties responsible if industrial relations disputes arise in employment relations. Indeed there are no rules that require the parties to attend.

## ***Result and Discussion***

Tripartite Negotiations are negotiations between workers / laborers or trade / labor unions and employers who are facilitated by the Mediator / Conciliator / Arbitrator as a follow-up to the failure of bipartite negotiations. In resolving industrial relations disputes there are 3 forms of tripartite, namely:

1. Tripartite mediation, hereinafter referred to as mediation, is the settlement of rights disputes, interest disputes, termination of employment disputes and disputes between trade unions / labor unions in only one company through deliberations mediated by one or more neutral mediators.
2. Conciliation is the settlement of disputes of interest, disputes regarding termination of employment and disputes between trade unions / labor unions in only one company through deliberations mediated by one or more neutral conciliators.
3. Arbitration is the settlement of a dispute of interest and disputes between trade unions / labor unions in only one company outside the industrial relations court through a written agreement from the disputing parties to submit the dispute settlement to the Arbitrator whose decision is binding on the parties and is final.

### **A. Case Position Disputes on Industrial Relations Busman Vs Elnusa Petropin Limited Liability Company.**

Busman workers are workers who work at the Elnusa Petropin Limited Liability Company, located at Jl. Padang Painan Bungus Teluk Kabung Padang, West Sumatra Province, as a fuel tank tank driver entered through the outsourcing system, Busman workers began work starting on June 7, 2007 and were dismissed on July 21, 2016, based on a Letter from Elnusa Petropin Limited Company Number L9 / 200 -H-EPN / 2016.1346 dated July 21, 2016 concerning the return of employees of the Kopenusa Limited Liability Company because they have reached retirement age 55 years.

Problems between Busman Workers and Elnusa Petropin Limited Liability Company arise due to the non-payment of severance pay from the company since the termination of the Busman Employee dismissal based on a letter from Elnusa Petropin Limited Liability Company Number L9 / 200-H-EPN /

2016.1346 dated July 21, 2016 concerning the return of employees of Kopenusa Limited Liability Company. Since starting work on June 7, 2007, Busman Workers have never been given a work agreement by the company as it should be based on the provisions in Article 54 paragraph (3) of Act No. 13 of 2003 concerning Manpower which reads: "The employment agreement as referred to in paragraph (1 ) made at least 2 (two) copies that have the same legal force, and workers / laborers and employers each get 1 (one) work agreement ".

Based on the problem, Busman workers reported to the Padang City Manpower and Transmigration Social Service Office which was followed up with the summoning of Busman Workers and Elnusa Petropin Limited Company for resolution through the mediation process, then the Mediator of the Padang City Labor Social Service called the Elnusa Petropin Limited Company with a mediation hearing Call Number 563 / 73.72 / Sosnaker / 2016 dated 23 September 2016 the company did not attend the call while workers were present.

That on the basis that the Mediator at the Padang City Labor Social Service issued a mediation negotiation minutes on October 4, 2016 and written recommendation no. 563 / 44.26 / SOSNAKER / 2016 which in the legal consideration and opinion of the Mediator, specifically the problem of Busman with the Elnusa Petropin Limited Liability company, the company did not come according to the schedule determined and the company allegedly stalled, the Mediator made a decision just one call, that workers have not been given a work agreement since they started working between the company and the workers starting from the Patra Niaga Limited Liability Company, Elnusa Petropin Limited Liability Company, Makassar Main Terminal Limited Liability Company, Elnusa Petropin Limited Liability Company,

Based on the foregoing, in order to resolve this Industrial Relations Dispute, the Mediator recommends that employers provide and pay Busman workers for:

- |                              |                   |
|------------------------------|-------------------|
| a. Severance pay of          | : Rp.48,600,000   |
| 9 x 2 x Rp. 2,700,000        |                   |
| b. Long Service Award Money  | : Rp. 8.1 million |
| 3 x 1 x Rp. 2,700,000        |                   |
| c. Remuneration Rights       |                   |
| - Housing and Medicine       | : Rp. 8,50,000.   |
| 15% x Rp.56,700,000          |                   |
| - Unpaid Year Leave          | : Rp. 1,296,000 + |
| 12/25 x Rp.2,700,000 - ----- |                   |

TOTAL ===== Rp. 66,501,000 (sixty six million five hundred and one thousand rupiah)

That based on the recommendation of the Mediator's written recommendation that obliged the Elnusa Petropin Limited Liability Company to pay Busman workers' rights in the amount of Rp. 66,501,000 (sixty six million five hundred and one thousand rupiah), did not get a response from the company so the dispute settlement will continue at the litigation level, as stipulated in the Industrial Relations Dispute Settlement Act that before entering the domain of litigation, dispute settlement mandatory through the bipartite and tripartite processes.

## **B. Industrial Relations Dispute Analysis Busman Vs Elnusa Petropin Limited Liability Company.**

Industrial Relations Disputes between Busman workers and Elnusa Petropin Limited Liability Company, which in its settlement are guided by the basis of labor law which consists of the Manpower Act, the Industrial Relations Dispute Settlement Act, Minister of Manpower and Transmigration Decree No.100 / MEN / IV / 2004 concerning the Implementation of Specific Time Work Agreements, Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number 19 of

2012 concerning Terms of Submission of Partial Work Implementation to Other Companies and Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number 17 of 2014 concerning Appointment and Termination of Mediator Relationship Industrial and Mediation Work Procedures.

In the employment law of Busman workers are Kopenusa Limited Liability Company workers who work for the Elnusa Petropin Limited Liability Company can be seen from the phrase "That based on a letter from the Kopenusa Limited Liability Company Number L9.3180K-2016,874 dated July 21 concerning the Termination of Employment Relationships to Brothers Busman" which contained in Recommendation No. 563 / 44.26 / SOSNAKER / 2016. As referred to in Article 1 number (3) of the Manpower Act which states that: "A Worker / Laborer is any person who works for a wage or other forms of remuneration".

Kopenusa Limited Liability Company is a company engaged in providing labor services. Article 1 paragraph (3) Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Requirements for Submission of Partial Works to Other Companies support services for employers. "While the Limited Liability Company Elnusa Petropin is a company engaged in oil and gas products and services, where Busman workers work as crew I (drivers) of Pertamina fuel tanks. In Article 1 number 6 of the Manpower Act which states that companies are:

- a. Any form of business that is a legal entity or not, belongs to individuals, belongs to a partnership, or belongs to a legal entity, both private and state owned, which employs workers / laborers by paying wages or compensation in other forms;
- b. Social businesses and other businesses that have management and employ others by paying wages or other forms of compensation.

In labor law the relationship between Busmandan Elnusa Petropin Limited Liability Company is an Industrial Relations. Based on Article 1 number 16, the Manpower Act provides the meaning of industrial relations: "a system of relations formed between actors in the process of production of goods and / or services consisting of elements of employers, workers / laborers, and the government based on the value of the Pancasila and the 1945 Constitution of the Republic of Indonesia.

Industrial relations occurs because workers on the one hand and management on the other hand need each other, management requires the contribution of ideas, ideas, employees to achieve their goals, while employees need income to provide welfare for their families<sup>10</sup>. In this industrial relationship, employees should be treated as whole people, that is, they should not be treated arbitrarily, because usually the workers are always in a weak bargaining position.<sup>11</sup>Such as industrial relations disputes that occur between Busman workers and Elnusa Petropin Limited Company.

Busman Worker works as Crew I (Driver) of Pertamina Fuel Tanks at Elnusa Petropin Limited Company, which starts working starting from June 7, 2007 and is dismissed on July 21, 2016, based on a Letter from Elnusa Petropin Limited Company Number L9 / 200-H-EPN /2016.1346 dated 21 July 2016 concerning the return of employees of the Kopenusa Limited Liability Company. The Kopenusa Limited Company employee return phrase contained in recommendation number 563 / 44.26 / SOSNAKER / 2016 can be interpreted that the Busman employee status is as a worker with a Specific Time Work Agreement, with Elnusa Petropin Limited Company as a Employer / Labor Service Company and Kopenusa Limited Company as a worker Worker Service Provider Company.

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<sup>10</sup>Koeshartono and Shellyana Junaedi, *Industrial Relations: Study of Economic Concepts and Problems*, Faculty of Economics, Atma Jaya University, Yogyakarta, 2009, p. 75

<sup>11</sup>*Ibid*

Problems between Busman workers and Elnusa Petropin Limited Company arise due to non-payment of severance pay, years of service awards, and other compensation rights by the company since the dismissal of the Company on July 21, 2016. Based on Busman's information, he has never been given an employment agreement what the company agreed with him started with a Patra Niaga Limited Liability Company, Elnusa Petropin Limited Liability Company, Makasar Main Terminal Limited Company, Elnusa Petropin Limited Liability Company and finally Kopenusa Limited Liability Company, resulting in dispute. Disputes that occur within the company in labor law are called industrial relations disputes.

The employment agreement is the right of the worker who is the subject in a work relationship, based on the information from the Busman worker that has never been given by the Company as it should be based on the provisions in Article 54 paragraph (3) of the Workforce which reads: "The employment agreement as referred to in paragraph (1) made at least 2 (two) copies that have the same legal force, and workers / laborers and employers each get 1 (one) work agreement "; furthermore in Article 57 paragraph (1) "Work agreements for a certain time are made in writing and must use Indonesian and Latin letters",

During this time if there is a dispute between employers and workers resolved through the procedures specified in the Law of the Republic of Indonesia Number 22 of 1957 which has been revoked with the Law of the Republic of Indonesia Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.<sup>12</sup> Industrial relations disputes based on Article 1 number 22 of the Manpower Act, are: "differences of opinion that result in conflict between employers or employers' associations or joint employers with workers / laborers or trade / labor unions due to disputes regarding rights, disputes of interest, and disputes Termination of employment and disputes between trade unions / labor unions in only one company ".

Whereas according to the Industrial Relations Dispute Settlement Act, industrial relations disputes are: "Differences of opinion that result in conflicts between employers and workers / laborers or trade / labor unions due to rights disputes, conflicts of interest, and disputes regarding termination of employment and disputes between trade unions / workers only in one company. "

So, the understanding is the same between the Labor Law. with the Industrial Relations Dispute Settlement Act. Based on this understanding, the elements of industrial relations disputes that occur in Busman workers and the Elnusa Petropin Limited Liability Company consist of:

- 1) The subjects are: Elnusa Petropin Limited Company, as a Employee / Labor Service User Company, Kopenusa Limited Company as a Worker / Labor Service Provider Company and Busman workers.
- 2) The object is due to a Work Termination Dispute because of retirement age.

The industrial relations dispute that occurred between Busman and the Elnusa Petropin Limited Liability Company occurred because of a dispute over rights due to termination of employment, in this case a dispute over rights related to non-payment of severance pay, years of service awards and other compensation rights, as stipulated in Article 167 Labour Laws.

In accordance with the provisions stipulated in Article 136 paragraph (1) of the Manpower Act states that: "Settlement of Industrial Relations Disputes shall be carried out by resolving employers and workers / laborers or trade / labor unions by deliberation to reach consensus", and Article 3 paragraph (1) Industrial Relations Dispute Settlement Act "Industrial Relations Dispute must be sought in advance through deliberate bipartite negotiations to reach consensus", and Article 4 paragraph (1) of the Industrial

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<sup>12</sup> Khairani, Op.Cit, p.141

Relations Dispute Settlement Act "In the event that bipartite negotiations fail as referred to in the agreement" Article 3 paragraph (3), then one or both parties register their dispute with the agency responsible for local manpower by attaching evidence that the settlement efforts through bipartite negotiations have been made".

In carrying out the functions of government, power and authority are very important, in the Big Indonesian Dictionary, the word "authority" has meaning. The right and power to act, authority, the power to make decisions, rule and delegate responsibility to others<sup>13</sup>

Authority is generally defined as the power to perform all public legal actions. Theoretically, the authority derived from the legislation is obtained through three ways, namely attribution, delegation and mandate. The scope of government authority, not only includes the authority to make government decisions (besluit), but also all the authorities in the context of carrying out their duties. Padang City Manpower and Industry Office was formed on 1 (one) January 2017 based on Padang Mayor Regulation Number 73 Year 2016 Regarding Position, Organizational Structure, Duties, Functions, and Work Procedures of Manpower and Industry Office Article 4 paragraph (1) Perwako No .73 of 2016, the City of Manpower and Industry Office of the City of Padang has the main duties Assist the Mayor in implementing governmental affairs in the field of manpower and industry as well as co-administration tasks given to the regions.

As mandated by the Manpower Act and the Industrial Relations Dispute Settlement Act, Busman workers reported this to the Padang City Manpower and Industry Office which in 2016 was named the Padang City Social and Labor Office. In the industrial relations settlement system in accordance with the Industrial Relations Dispute Settlement Act, settlement starts from the bipartite level, mediation and the Industrial Relations Court. According to Takdir Rahmadi, mediation is a process of resolving disputes between two or more parties through negotiations or by means of consensus with the help of neutral parties who do not have the authority to decide. The neutral party is called a mediator with the task of providing procedural and substantial assistance.<sup>14</sup>

The presence of mediation makes better choices in industrial relations disputes, between employers and workers being invited to sit together with the help of a third person whose mediation is called "Mediator". Mediators are intermediaries (liaison, mediator) for the parties to the dispute.<sup>15</sup>

In accordance with Article 102 paragraph (1) of the Manpower Act, it states that "In carrying out industrial relations, the government has the function of establishing policies, providing services, carrying out supervision, and taking action against violations of labor laws and regulations."

In the mediation process the Mediator at the Padang City Manpower Social Service only calls / invites Elnusa Petropin Limited Company while Kopenusa Limited Company as the Employer Service Provider Company is not invited / invited, this has been the author's confirmation to Mr. Berto Irvan as Mediator in this case, he said that Pertamina should have been responsible for Busman Workers carrying Pertamina Fuel Tanker trucks<sup>16</sup>, whereas Kopenusa Limited Liability Company is the subject of this working relationship, it is clearly seen in the Suggestion Phrases Number 563 / 44.26 / SOSNAKER / 2016. "That based on a letter from the Kopenusa Limited Liability Company Number L9.3180K-2016,874 dated July 21, concerning the Termination of Employment Relationship to Brother Busman workers" which has clearly stated Busman workers are employees of the Kopenusa Limited Liability Company.

<sup>13</sup>Big Indonesian Dictionary, 1990, Balai Pustaka, Jakarta, p. 1011

<sup>14</sup>Takdir Rahmadi, Op.Cit, pp. 12-13

<sup>15</sup>Ismail Nawawi, Industrial Conflict Management, Inpress, Surabaya, 2002, p.41

<sup>16</sup>Interview with Berto Irvan, Mediator of the City of Manpower and Industry Office of the City of Padang.



Article 66 paragraph (2) letter c of the Manpower Law states "the protection of wages and welfare, conditions of employment and disputes arising from the responsibility of employers providing workers / laborers". then Kopenusa Limited Liability Company should also be called / invited in tripartite mediation, the absence of Kopenusa Limited Liability Company as a Service Provider of Workers / laborers not present in tripartite mediation is because they were not properly invited as in Article 13 paragraph (1) letter b of the Minister of Manpower and Transmigration Regulation Number 17 of 2014 "prepare a written call to the parties to attend by considering the appropriate summons so that the Mediation session can be held no later than 7 (seven) working days from receiving the delegation of tasks to settle disputes ". That by not properly inviting Kopenusa Limited Company in the tripartite mediation of industrial relations disputes, Busman Workers made written recommendations from the Padang City Labor Social Service Number 563/44.

In the Industrial Relations Dispute Settlement Act and the Minister of Manpower and Transmigration Regulation No.17 of 2014 and other laws and regulations there are no rules that govern the company to be present and make decisions in the tripartite mediation session of industrial relations disputes at the Manpower Office and industry. Article 13 paragraph (4) of the Regulation of the Minister of Manpower and Transmigration No.17 of 2014 states "In the event that the parties have been properly and properly summoned 3 (three) times it turns out that the requested party is absent, then the mediator issues written recommendations based on available data" , further explained by Ms. Hera Anwar, who is meant by the respondent in this Article is the company,<sup>17</sup>So the tripartite mediation of industrial relations disputes at the Department of Labor and Industry is only a formal requirement stipulated in the Industrial Relations Dispute Settlement Act to settle disputes at the court level (litigation).

The written recommendation issued by the Department of Manpower and Industry is not a decision, but an obligation mandated by Minister of Manpower and Transmigration Regulation No.17 of 2014 in accordance with the definition of mediation according to Takdir Rahmadi that mediation is an effort to resolve disputes attempted with the assistance of other parties that are of a nature impartiality through negotiations based on a consensus and consensus approach where the role of the party helping the dispute has no decision authority, the neutral party is called the Mediator with the task of providing procedural and substantial assistance<sup>18</sup>

Pursuant to Article 136 number (2) of the Manpower Act states that in the event that deliberation to reach consensus is not reached, employers and workers / laborers settle industrial relations disputes through the Procedure for Settling Industrial Relations Disputes governed by the Law, namely the Republic of Law Indonesia Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.

As stipulated in the Industrial Relations Dispute Settlement Act, the Industrial Relations Dispute Settlement process can be taken through the Industrial Relations Court after the dispute is resolved by bipartite, mediation or conciliation. In the Theory of Settlement of Disputes developed by legal anthropologists, they express their opinions on ways of resolving disputes that occur in society, both in modern and traditional societies. Nader and Todd as quoted by Salim HS revealed seven ways of resolving disputes. The seven ways are presented below<sup>19</sup> that is, letting it or lumping it, avoiding, coercion, negotiation, mediation, arbitration, justice, adjudication.

According to this theory, dispute resolution consists of two forms, first is dispute resolution through litigation and second, dispute resolution outside the court (non litigation). Both forms of settlement are legal forms of settlement, because they are regulated according to law. The similarity

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<sup>17</sup>Interview with Hera Azwar (State Civil Apparatus and Mediator at the Padang City Manpower and Industry Office)

<sup>18</sup> Takdir Rahmadi, Op.Cit, p.13

<sup>19</sup> *Ibid*, P.96

between dispute resolution through court (Litigation) and dispute resolution outside court (non litigation), is equally intended to resolve disputes legally.

Mediation in Industrial Relations Dispute Settlement in addition to the formal procedures required by the Act, is also an alternative to settling disputes outside the court, arrangements regarding the working procedures of mediation in Industrial Relations Dispute Settlement are regulated in Minister of Manpower and Transmigration Regulation Number 17 of 2014 concerning Appointment and Termination of Mediator and Mediation Procedure.

The role of the mediator is an important factor in the success of mediation. In addition to being able to be neutral, the Mediator must also be observant in analyzing a case which is resolved as in the tripartite negotiations of industrial relations disputes between Busman workers with the Elnusa Petropin Limited Company and Kopenusa Limited Company, the Mediator must ensure all parties involved in the Specific Time Work Agreement with the transfer system power / outsourcing that will cause mediation efforts to be useless because of lack of parties if the mediation settlement fails and proceed to the Court, this is related to justice for workers who have worked in a certain period of time in a company for their rights in the form of severance pay, years of service awards and reimbursement of rights in accordance with Article 161 of the Manpower Act. Mediators in the tripartite mediation of industrial relations disputes must be more observant in carrying out their duties ensuring all parties involved in the Specific Time Work Agreement with the outsourcing system.

According to Erman Rajagukguk, the legal culture of the community is one of the factors that influence the importance of resolving business disputes outside the court. Traditional culture that emphasizes community, kinship, harmony, *primus inter pares* has encouraged dispute resolution outside the court.<sup>20</sup> The culture and attitudes of the parties in conducting mediation are equally important in determining the success of mediation. The attitude of the parties in dealing with disputes will more or less be influenced by the culture of the parties. If analyzed, since ancient times the people in Indonesia in resolving disagreements or disputes have been acquainted with the consensus method of mediation. It's just that, in today's condition, the way to resolve disputes is confronted with modern or conventional legal methods that prioritize legal certainty. So that those who feel they have a stronger position according to the law, will be reluctant to take mediation because they feel they are in a winning position.

Friedman explained that people care about what other people think. No one is free from the influence of others. We are all very influenced by family, friends, neighbors, or coworkers. We all feel that there is a hidden or quite striking influence among those who live with us. This influence can encourage us to obey or not obey the law, or use certain laws or patterned. Likewise in the mediation process, the Mediator can exert influence on the parties through appropriate dialogues and communication so that the parties to the dispute can understand the meaning and purpose of mediation and choose the resolution of the dispute through mediation efforts.

To make a strong influence on the parties in the implementation of mediation certainly requires Mediator expertise, deliberation culture and consensus eroded by a culture of conflict that was born on the encouragement of modern (conventional) method of punishment is expected to be regained through mediatorial expertise in providing positive influences against the parties. The influence given by the Mediator to the parties can shift the legal culture of the parties so that it will always choose mediation as an effort to settle disputes between them and make mediation an effective dispute resolution effort.

Awareness and concern of the parties can also be an important factor in the success of mediation. In general mediation is not successful because of the lack of goodwill from the parties, the absence of the

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<sup>20</sup>Erman Rajagukguk, "Legal Culture and Settlement of Civil Disputes Outside the Courts", Journal of Law Masters, PPs UII, Yogyakarta, Volume.2 No. 4, October 2000.hlm. 7

parties, especially business actors who have been properly invited to come to the Department of Manpower and Industry of the City of Padang in the dispute resolution framework is an obstacle to the success of mediation<sup>21</sup>. How mediation can be carried out while there are parties who are not committed either by not attending or stalling in the series of Industrial Relations Dispute Settlement being sought. To overcome the behavior and attitudes of such parties, it should be formulated and made strict sanctions against the bad attitudes of the parties who have been appropriately summoned by the Mediator of the Padang City Manpower and Industry Office.

As mandated by the Industrial Relations Dispute Settlement Act, that tripartite mediation is a mandatory requirement that must be taken before the Industrial Relations Dispute Settlement in litigation / through court, where the mediation procedure has been regulated in Minister of Manpower and Transmigration Regulation No.17 in 2014, the existence of The Mediator's negligence in carrying out his duties and functions, especially in determining the parties involved in the work agreement for the provision of workers' services or more commonly known to the public as outsourcing workers will result in losses to the workers. Tripartite mediation will be useless if the dispute resolution continues through the court, because obviously the lawsuit will be rejected in the court's decision because of lack of parties or in the trial better known as the error in persona. This will cause losses to the workers, namely the loss of severance pay, work tenure rewards, compensation for housing, medical treatment and annual leave that have not yet been lost.

### ***Conclusion***

1. The mediation mechanism in the settlement of Termination of Employment in the Padang City Manpower Office, namely the recording of disputes in termination of employment in the City of Manpower and Industry Office of Padang, the offer of resolving disputes for termination of employment to use conciliator settlement, research of disputes, summons to parties, and mediation results. in resolving disputes regarding termination of employment. At the mediation stage the results achieved are 2 (two) possibilities namely, if the mediation is successful a Joint Agreement Letter will be made and if the mediation fails, the Mediator will issue a written recommendation. and finally Making minutes of Industrial Relations Dispute Settlement. The period of dispute resolution through mediation efforts at the Department of Manpower and Industry is 30 (thirty) working days from the receipt of the dispute resolution delegation. This time is declared inadequate for the success of mediation, while the Mediator is committed to every case taken with mediation efforts as usual as possible endeavored even if it exceeds the settlement time according to the rules. The obstacle in tripartite mediation between workers and companies is that the company does not want to attend mediation invitations by the Mediator at the Padang City Manpower and Industry Office, even if they do not provide opinions and tend to stall, this is due to the absence of rules which is forcing the company to do that.
2. The industrial relations dispute between Busman and the Elnusa Petropin Limited Company as an employer company and Kopenusa Limited Company as a provider of workers in the recommendations and minutes of the negotiation. mediation so that it becomes legally flawed because of lack of parties, that based on Article 66 paragraph (2) letter c of the Manpower Act states "protection of wages and welfare, terms of employment, and disputes that arise are the responsibility of the company providing workers / laborers", in accordance with the law it should be in addition to the Elnusa Petropin Limited Liability Company, Kopenusa Limited Liability Company was also summoned / invited in tripartite negotiations, clarified in the recommendation there was the phrase "That based on a letter from the Kopenusa Limited Liability Company Number L9.3180K-2016,874 dated July 21 regarding the Termination of Employment Relationships to Brother Busman workers" stating Busman workers are workers from the Kopenusa Limited Liability Company.

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<sup>21</sup>Interview with Hera Azwar (State Civil Apparatus and Mediator at the Padang City Manpower and Industry Office)

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Interview with Hera Azwar (State Civil Apparatus and Mediator at the Padang City Manpower and Industry Office).

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