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Juridical Implications of the Industrial Relations Court Verdict Which Is Not in Accordance with Article 103 of Law No. 2 of 2004 Concerning Settlement of Industrial Relations Disputes

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Abstract

The symbiosis of mutualism between laborers and employers is a process of social interaction in human life in an effort to meet the diverse needs of life, so to be able to meet all these needs humans are required to work. A worker or laborer is someone who works for someone else with a salary, or also anyone who works for a wage or other forms of remuneration. Employers or Employers are individuals, employers, legal entities or other bodies that employ workers by paying wages or other forms of remuneration. The mechanism for resolving industrial relations disputes is carried out with two mechanisms, namely the no litigation mechanism consisting of the bipatrite and tripatrite mechanism and the litigation mechanism which is carried out by submitting an application for industrial relations disputes to the Industrial Relations Court.

Keywords: *Juridical; Dispute; Industrial*

Introduction

The symbiosis of mutualism between laborers and employers is a process of social interaction in human life in an effort to meet the diverse needs of life, so to be able to meet all these needs humans are required to work.[1] A worker[2] or laborer is someone who works for someone else with a salary, or also anyone who works for a wage or other forms of remuneration. Employers or Employers are individuals, employers, legal entities or other bodies that employ workers by paying wages or other forms of remuneration.

In the employment relationship between workers and employers, legally workers should be free because the principle in Indonesia is that no one should be enslaved or enslaved on any basis, but

[1] Oded Shenkar, 'Organization Behavior',in *Handbook of Asian Management*,2005 <https://doi.org/10.1007/1-4020-7932-x_10>.
[2] Abdul Rachmad Budiono, 'Hak Kebebasan Berserikat Bagi Pekerja Sebagai Hak Konstitusional', *Jurnal Konstitusi*, 2016 <https://doi.org/10.31078/jk1345>.

sociologically workers are often placed in positions that are not free. Because workers are very dependent on the survival of their lives to the income / salary provided by the employer. Workers and employers in the process of interaction have a reciprocal relationship, the state of the relationship between the two will be greatly influenced by developments and changes that take place continuously both economically, politically, socially, lawfully, politically and other factors. Therefore between workers and employers have mutual interests and sometimes differences of understanding occur resulting in disputes between employers and workers.

The problem of differences in interests between workers and employers in work relationships is basically based on two interests, namely workers having an interest in getting work in return for services that can meet the needs of workers and their families. On the contrary, the interests of employers include developing their businesses by employing workers. The cause of industrial relations disputes can come from employers and workers. From the employer side, the cause of the dispute is to pay less attention to the interests of the workers and their demands, to take action on workers who make demands, obstruct or refuse the worker to carry out work. The cause of disputes on the part of the workforce is because their demands are not met by employers either individually or collectively slowing down or stopping work as a result of disputes.

Settlement of disputes in the form of non-litigation is done by bipartite and tripartite. "Bipartite negotiations are negotiations between employers or a combination of employers and workers/laborers or trade unions/labor unions or between other unions in a disputing company" and "tripartite[3] negotiations are settlement of industrial relations disputes through third parties". Whereas disputes settlement in the form of litigation is carried out through the Industrial Relations Court. Whereas litigation of industrial relations disputes (court of industrial relations and cassation) is regulated in Article 81 to Article 115 of the PPHI Law.

Whereas with regard to disputes between workers and employers,[4] the settlement of disputes uses the mechanism of industrial relations courts. Industrial relations courts are special courts within the district court environment "this is in accordance with Article 55 of the PPHI Law which has the authority to adjudicate industrial relations disputes. The existence of a time limit of 50 days for the award of the industrial relations court indicates that industrial relations disputes must be resolved in a short time and this has been accommodated in formal law. However, incomplete regulation of these provisions is still a problem that must be solved.

Formulation of the Problem

1. What is the Mechanism for Settling Industrial Relations Disputes Under Law Number 2 of 2004?
2. What are Juridical Implications for the Provisions of Article 103 of Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes?

[3] International Labour Organization (ILO), 'Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration) - 5th Edition (March 2017)', *(Adopted by the Governing Body of the International Labour Office at Its 204th Session (Geneva, November 1977) and Amended at Its 279th (November 2000), 295th (March 2006) and 329th (March 2017) Sessions*, 2017.

[4] Alek Felstinerf, 'Working the Crowd : Employment and Labor Law in the Crowdsourcing Industry', *Berkeley Journal of Employment & Labor Law*, 2011 <https://doi.org/10.15779/Z38Z92X>.

Method

This research is a legal research using the socio-normative approach. The legal materials used are primary and secondary legal materials which are analyzed using qualitative analysis.[5]

Analysis

How is the Mechanism for Settling Industrial Relations Disputes Based on Law Number 2 of 2004

Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes was promulgated on January 14, 2004 to replace Law Number 22 of 1957 concerning Settlement of Labor Disputes. In Law Number 2 of 2004 there were some changes from the provisions in the previous law. These changes include terminology, types of disputes, and ways of resolving disputes.

Regarding terminology, Law No. 2/2004 replaced the term labor disputes into industrial relations disputes. Pursuant to Article 1 number 1 of Law Number 2 of 2004, industrial relations disputes are "differences of opinion which result in conflict between employers or employers' associations with workers/laborers or trade/labor unions due to disputes regarding rights, disputes of interest, disputes over termination of employment, and disputes between trade unions/labor unions in one company."

Some principles of industrial relations dispute resolution according to Law number 2 of 2004 are:[6]

1. Efforts should be made to solve it in a bipartite manner through deliberations to reach consensus;
2. If the deliberation effort does not reach an agreement, the parties arrange it through the procedure of resolving industrial relations disputes regulated in the law;
3. There is a record of disputes by the agency responsible for labor if bipartite negotiations fail;
4. Every bipartite negotiation must be made minutes signed by the parties. Obligations of the parties to provide information including opening books and showing documents needed for the process of resolving industrial relations disputes to the mediator or conciliator or arbitrator;
5. The mechanism for resolving industrial relations disputes is pursued through bipartite, conciliation or arbitration or mediation, and industrial relations courts;
6. There is an obligation for the mediator, conciliator, arbitrator, and judge to keep the information obtained in order to resolve industrial relations disputes;
7. Settlement of disputes through the courts is carried out using civil procedural law that applies to general courts, except those specifically regulated in the PPHI Law;
8. There are administrative and criminal sanctions provisions.

[5] Tomy Michael, 'Humanity In The Enforcement Of Anti-Corruption Laws', *Jurnal Hukum Bisnis Bonum Commune*, 2.2 (2019), 211.
[6]Ian Trushell, 'Dispute Resolution', in *New Aspects of Quantity Surveying Practice*, 2017 <https://doi.org/10.1201/9781315561707>.

The enactment of Law Number 2 of 2004 provides a new hope for building better industrial relations. If prior to the enactment of the law, it sometimes takes up to three years to resolve labor disputes, then through Law Number 2 of 2004, industrial dispute settlement can be settled within no more than 140 (one hundred forty) days. Regarding the way of dispute resolution, Law Number 2 of 2004 regulates into two ways, namely non litigation and litigation. Unlike the previous law which only regulates by negotiation or non-litigation. The non-litigation method is pursued by bipartite and tripartite. Whereas the litigation method is pursued through the industrial relations court and the Supreme Court.

Each type of dispute must be sought first by means of bipartite or deliberations of the parties without mediation.[7] This is no different from the mechanism of Law Number 22 Year 1957. The difference lies in the parties in the negotiations. According to Law Number 22 of 1957 bipartite negotiations are carried out by trade unions or trade unions while Law Number 2 of 2004 is known only for individual/labor union involvement, but not for trade union unions. If the bipartite fails, the parties can choose to settle the dispute through mediation, conciliation, or arbitration. Furthermore, if the dispute cannot also be reconciled, then one of the parties may submit a lawsuit to the industrial relations court in the district court of the parties' jurisdiction. With respect to rights disputes and disputes[8] over termination of employment, legal proceedings can be appealed to the Supreme Court. Law Number 2 of 2004 specifically regulates the time limit for dispute resolution. Settlement through bipartite and tripartite must be completed within 30 (thirty) working days, the industrial relations court must be completed within 50 (fifty) working days, while the appeal for cassation must be completed within 30 (thirty) working days. The existence of these time limit arrangements shows that industrial relations disputes must be resolved in a short time.

What are Juridical Implications for the Provisions of Article 103 of Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes

Settlement of disputes is limited to a maximum of 50 days in accordance with the provisions of Article 103 of the PPHI Law which states that *"the panel of judges must provide a decision on the settlement of industrial relations disputes no later than 50 (fifty) working days from the first hearing"*. Legally, Article 103 of the PPHI Law is an incomplete provision because there are no legal consequences if the decision on the settlement of industrial relations disputes exceeds the allotted time. As a result, the panel of judges may give a decision beyond the 50 day deadline. It will also extend the time of dispute resolution. Sociologically, many industrial relations court rulings exceed the 50 working day deadline.This can be seen from several Industrial Relations Court decisions in five major cities in Indonesia, namely Jakarta, Bandung, Surabaya, Medan, and Makassar. For example, shown in the following table.

Table 1: Verdict of Industrial Relations Court Over the 50 Day Limit

No	Case Number	Type of Dispute	First Trial Date	Date of Decision	Inform
1	25/PHI.G/2013/PN.JKT.PST	Work termination	7 Feb 2013	10 Jun 2013	123 days
2	105/PHI.G/2013/PN.JKT.PST	Work termination	1 July 2013	21 Oct 2013	112 days
3	4/PHI.G/2014/PN.JKT.PST	Work termination	23 Jan 2014	24 Jul 2014	182 days
4	11/PHI.G/2014/PN.JKT.PST	Work termination	3 Feb 2014	25 Agust 2014	203 days
5	1/PHI/2016/PN.Mks	Right	21 Jan 2016	28 Mar 2016	61 days
6	11/Pdt.Sus-PHI/2016/PN.Smg	Work termination	19 July 2016	12 Oct 2016	84 days
7	29/Pdt.Sus-PHI/2017/PN.Smg	Work termination	24August 2017	14 Dec 2017	112 days

[7] Tyler Van Der weele and Stijn Vansteelandt, 'Mediation Analysis with Multiple Mediators', *Epidemiologic Methods*, 2013 <https://doi.org/10.1515/em-2012-0010>.
[8] Andrea Greppi, '"Human Rights Quarterly"', *Derechos y Libertades: Revista Del Instituto Bartolomé de Las Casas*, 1993.

8	36/Pdt.Sus-PHI/2017/PN.Smg	Work termination	24 Oct 2017	27 Mar 2018	154 days
9	5/Pdt.Sus-PHI/2018/PN.SBY	Work termination	31 Jan 2018	23 May 2018	127 days
10	4/Pdt.Sus-PHI/2018/PN.SBY	Work termination	1 Feb 2018	17 May 2018	105 days
11	182/Pdt.Sus-PHI/2018/PN.Bdg	Work termination	19 Sept 2018	21 Jan 2019	123 days
12	212/Pdt.Sus-PHI/2018/PN.Bdg	Work termination	7 Nov 2018	13 Feb 2019	98 days
13	223/Pdt.Sus-PHI/2018/PN.Bdg	Right	21 Nov 2018	6 Feb 2019	77 days
14	25/Pdt.Sus-PHI/2019/PN.Mdn	Work termination	7 Feb 2019	2 May 2019	84 days
15	35/Pdt.Sus-PHI/2019/PN.Mdn	Right	18 Feb 2019	6 May 2019	77 days

Source: processed legal materia; (Supreme Court Case Tracking Information System)

The juridical implication of Article 103 of the PPHI Law is that it does not have legal certainty so it does not protect the parties, especially workers who have lower positions. If this continues, it is feared that it will have a wider impact on national stability because it is essentially legal protection for workers as well as legal protection for their families. In addition to the lack of legal certainty due to incomplete Article 103 of the PPHI Law, the provision also impacts injustice for the workers because the settlement process in the industrial relations court can take a long time or exceed 50 days.

In connection with this, in 2015, the Supreme Court issued Circular Letter (SEMA) No.3 of 2015 concerning "Enactment of the Formulation of the Results of the 2015 Supreme Court Plenary Meeting as a Guideline for the Implementation of Duties for the Courts". In the SEMA there is a provision which states: *"In relation to the process fee, the contents of the decision are to penalize the employer to pay a 6 month Process Wage. Excess time in the PHI process as referred to in Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement is no longer the responsibility of the parties ".*

The provisions contained in SEMA Number 3 of 2015 naturally contradict the Decision of the Constitutional Court No: 37 / PUU-IX / 2011 dated September 19, 2011 which in essence states employers are required to pay process wages until the settlement of industrial relations disputes has *inkraacht* or has legal force permanent. However, in practice, *judex juris* decides in accordance with SEMA Number 3 of 2015.[9]

The juridical implication of the provisions of this article is that it creates legal uncertainty from Article 103 of the PPHI Law which has an impact on procedural and substantive injustices for workers.[10] It is said to be procedurally unfair because many Industrial Relations Court Decisions exceed the deadline, so they do not protect the rights of workers socially.[11] While it is substantially unfair because the *judex juris* decision is more likely to follow SEMA Number 3 of 2015, which results in workers only getting six months 'salary during the dispute resolution process, it does not protect workers' rights economically.

Conclusion

The mechanism for resolving industrial relations disputes is carried out with two mechanisms, namely the no litigation mechanism consisting of the bipatrite and tripatrite mechanism and the litigation mechanism which is carried out by submitting an application for industrial relations disputes to the Industrial Relations Court. That the dispute resolution in the Industrial Relations Court is limited to a

[9] Imam Buchari, 'Pengaruh Upah Minimum Dan Tingkat Pendidikan Terhadap Penyerapan Tenaga Kerja Sektor Industri Manufaktur Di Pulau Sumatera Tahun 2012-2015', *Jurnal Riset Ekonomi Dan Bisnis*, 2016.

[10] Sali Susiana, 'Perlindungan Hak Pekerja Perempuan Dalam Perspektif Feminisme', *Aspirasi: Jurnal Masalah-Masalah Sosial*, 2017.

[11] Andanti Tyagita, 'Prinsip Kebebasan Berserikat Dalam Serikat Buruh Sebagai Upaya Perlindungan Dan Penegakan Hak Normatif Pekerja', *Yuridika*, 2011 <Https://Doi.Org/10.20473/Ydk.V26i1.259>.

maximum of 50 days in accordance with the provisions of Article 103 of the PPHI Law, the provision also impacts injustice for the workers because the settlement process in the industrial relations court can take a long time or exceed 50 days.

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Van Der weele, Tyler, and Stijn Vansteelandt, 'Mediation Analysis with Multiple Mediators', *Epidemiologic Methods*, 2013 <https://doi.org/10.1515/em-2012-0010>

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