

Conference Paper

Industrial Relations Mediator As an Effort to Settle Industrial Relations Disputes After the Covid-19 Pandemic

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Abstract.

The COVID-19 pandemic had both positive and negative impacts on all areas of people's lives. One of the negative impacts is the emergence of industrial relations disputes. Efforts to settle industrial relations dispute formally have been regulated in Law 2/2004. Industrial relations mediators have a vital role in resolving industrial relations disputes. This study aims to analyze the existence of industrial relations mediators in an effort to resolve these disputes. This research is a normative juridical approach to legislation and cases from the decision of the Industrial Relations Court at the Surabaya District Court number 111/Pdt-Sus PHI/2020/PN SBY. The results indicated that the existence of industrial relations mediators was strongly influenced by the quality of the substance of the legal product. The written recommendation of the Manpower Office of Probolinggo City Number 34/PHI/II/2022 has suggested that employers provide 3 months of severance pay to the workers. The labor relations mediator of Probolinggo city was not careful in categorizing the substance of the object of the dispute, namely the termination of employment because the company closed and suffered losses, in accordance with the provisions of article 164 paragraph (1) of the labor law.

Keywords: written recommendation, mediator, industrial relation dispute

1. INTRODUCTION

The COVID-19 pandemic has had both positive and negative impacts on all areas of people's lives.[1][2][3] The Covid-19 pandemic is defined as an infectious disease that occurs everywhere throughout a wide geographical area.[4][5] The determination of the Pandemic in Indonesia was carried out based on presidential decree number 11 of 2020 jo Presidential Decree No. 24 of 2021.[6][7][8]

Covid-19 is a disease that occurs in the respiratory system caused by infection with the Coronavirus. This disease can be transmitted through contact or direct contact or close contact with Covid-19 sufferers. Based on data compiled by covid Indonesia as of

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July 12, 2022, it was recorded at 6,116,347. Of this number, 156,806 patients died due to Covid-19 or 2.56%. Those who recovered were 5,937,625 people or 97.07%. There are 21,916 people who are under treatment or are currently self-isolating or 0.003%. A large number of victims of the Covid-19 disease has become the basis for the Indonesian government to issue a social distancing policy as one of the health protocols during the Covid-19 pandemic. Until 2022, the implementation of social distancing.[9][10][11][12][13] Physical distancing, or self-isolation will still be carried out to prevent the spread of COVID-19.[12][13][14][15]

The impact on the economy has been felt by industrial relations players. [9][13][15][16] The form of implementing social distancing, physical distancing, or self-isolation is working from home online learning from home for school students or students delaying meetings or debates attended by large groups of people, not visiting people who are sick, wearing masks and keeping a distance and trying to implement social distancing, healthy and clean lifestyle, this includes the implementation of PSBB (Large-Scale Social Restrictions) in several affected areas.[17]

The negative impact is also felt in the field of employment, especially the emergence of industrial relations disputes between industrial relations players.[18] The form of industrial relations disputes that occurred after the Covid-19 pandemic was initially based on government policies on the implementation of social distancing, physical distancing, or self-isolation. There is a change in the work system by reducing working hours, hiring workers at home, and rearranging the wage system to terminate employment. Employers reduce or do not make payments for workers' rights because they are affected by the Covid-19 Pandemic. In the reporting period from April 1, 2020, to August 30, 2020, there were 2,175,928 people affected by the Covid-19 pandemic. Of that number, 386,877 people were laid off, 1,155,630 workers were laid off and 633,421 formal jobs went bankrupt or lost their businesses. This number is based on reporting, this number does not include prospective Indonesian migrant workers who failed to leave a total of 34,179 workers who were repatriated in terms of apprenticeship a total of 465 people, and data on other affected workers is 1,453,635 so that the total number of affected jobs as of 30 August 2020 was 3,664,207 persons.

Workers affected by COVID-19 should have their rights guaranteed and protected by the state. The right to work is protected by the constitution. Every citizen has the right to get a job and a decent living for humanity. In the field of manpower, it is also guaranteed that everyone has the right to work and receive fair and proper remuneration and treatment in an employment relationship and obtain legal protection in accordance

with the rules of labor law (Article 27, 28 D paragraph (2) of the 1945 Constitution of the Republic of Indonesia).

Provisions on the guarantee of the right to work (in the meaning of material law) in the Constitution are further elaborated in Law Number 13 of 2003 concerning Manpower, State Gazette of the Republic of Indonesia of 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279 hereinafter referred to as Law. Employment. The provisions for guaranteeing the right to work within the meaning of formal law in the Constitution are further elaborated in Law No. 2 of 2004 concerning the settlement of industrial relations disputes, the State Gazette of the Republic of Indonesia of 2004 Number 6, an additional Sheet of the Republic of Indonesia Number 4356, hereinafter referred to as Law settlement of industrial relations disputes.

Guaranteed rights to work from the constitution and labor regulations should be able to provide fulfillment of the lost rights of workers affected by COVID-19. Unfortunately, many employers are unable to meet these workers because they are bankrupt. This is where the emergence of industrial relations disputes. Efforts to settle industrial relations disputes formally have been regulated in Law 2/2004. The process of settling industrial relations disputes begins with the existence of bipartite negotiations. If this fails, mediation efforts can be carried out by industrial relations mediators and/or continued with an examination to the industrial relations court. The condition that the industrial relations dispute settlement process can be examined in the industrial relations court is the written recommendation of the industrial relations mediator. Industrial relations mediators have an important role in resolving industrial relations disputes. One of the recommendations of the industrial relations mediator that has been made is number 567/1034/425-117/2020 which was made based on a letter from the head of the PTSP investment office and the Manpower of Probolinggo city. On the basis of this recommendation, a lawsuit has been made to the industrial relations court. The decision of the industrial relations court at the Surabaya district court number 111/Pdt-Sus PHI/2020/PN SBY, which was set on January 28, 2021, needs to be analyzed. For this reason, this study aims to analyze the existence of industrial relations mediators in an effort to settle industrial relations disputes.

2. METHODOLOGY/ MATERIALS

This research is a normative juridical approach with legislation and cases. Normative juridical research in this study is used to find the rule of law[19][20], legal principles[21],

and legal doctrine[22], in order to answer the legal problems faced in this case is the existence of labor mediators.

The study carried out in this study is based on the provisions of Law No. 13 of 2003 concerning Manpower, Law No. 11 of 2020 concerning the Creation of Employment Clusters, and Law No. Two of 2004 concerning Settlement of Industrial Relations Disputes. The object and focus of normative legal research is research on legal synchronization related to labor mediators. Synchronization is carried out vertically with different degrees or horizontally with the same degree related to the existence of industrial relations mediators.

To focus more on research, a case approach is used, namely an analysis of the judge's considerations in the decision of the industrial relations court at the Surabaya district court number 111/Pdt-Sus PHI/2020/PN SBY. There is something interesting in the decision which is related to the substance of the written recommendation from the head of the PTSP investment office and the Manpower of Probolinggo city number 567/1034/425-117/2020.

This study uses primary legal materials consisting of legal rules of court decisions and literature related to the existence of industrial relations mediators. The analysis technique is carried out in a qualitative way, namely by analyzing legal materials sourced from legal rules, theories, doctrines, expert opinions, or the researcher's opinions. After conducting qualitative analysis, an interpretation of the laws and regulations will be carried out with relevant legal materials related to the existence of industrial relations mediators. From here, a descriptive conclusion will be drawn up containing a qualitative analysis of the regulations and decision related to the content of written recommendations of industrial relations mediators.

3. RESULTS AND DISCUSSIONS

Industrial relation is a system of relations formed between players in the process of producing goods and/or services consisting of elements of employers, workers and the government based on the values of Pancasila and the Indonesian constitution (Article 1 point 16 of the labor law). There are three substantive subjects in industrial relations, namely employers, workers, and the government. The object of industrial relation is the process of producing goods and/or services. Industrial relation is always expected by the parties to take place in harmony.[23]

The facts that exist in society are that industrial relations disputes frequently occur between industrial relations players.[24][25][26] Industrial relations disputes are differences of opinion which result in conflicts between employers/combined employers and workers/labor unions which are classified into four forms. The four forms industrial relationship disputes are disputes over rights, interests, termination of employment and between unions within one company. A rights dispute is a dispute that arises because there is no fulfillment of rights which results in differences in the implementation or interpretation of the provisions of laws and regulations, work agreements, company regulations, collective work agreements. Disputes of interest are disputes that arise in an employment relationship because there is no conformity of opinion regarding actions or changes in working conditions that have been determined in work agreements, company regulations, collective labor agreements. Disputes over termination of employment are disputes that arise because there is no conformity of opinion regarding the termination of employment by one of the parties. Disputes between trade unions in one company because there is no compatibility understanding of membership in the implementation of rights and obligations to a work union (Article 1 paragraph (2) of the law on the settlement of industrial relations disputes.

The narrow definition of industrial relations disputes has resulted in many labor cases that cannot be resolved.[25][26][27] Through the industrial relations dispute settlement mechanism based on law number 2 of 2004 until the filing of a lawsuit to the industrial relations court.

The process of settling industrial relations disputes as regulated in Law number two of 2004 starts from the stage of bipartite negotiations between the two parties, employers and workers. If the negotiations are successful, a Collective Agreement is drawn up which is registered with the industrial relations court at the local district court. If bipartite negotiations fail, then the parties can submit efforts through mediation to the local Manpower Office or through a conciliation or arbitration institution.

Industrial relations mediation is the settlement of four disputes through deliberation mediated by one or more neutral mediators. The neutral mediator is the relationship mediator. Industrial relations mediator is an employee of a government agency responsible for manpower affairs who meets the requirements as a mediator and is appointed by the Minister who is in charge of mediating and has the obligation to provide written recommendations to the disputing parties to resolve four forms of disputes (Article 1 point 11, 12 of the law) - industrial relations dispute settlement law

Mediation, conciliation or arbitration are alternative dispute resolution institutions. These three institutions should be purely carried out by third parties chosen by the

parties to help resolve their disputes on the basis of a win-win solution. Unfortunately, the concept of mediation in the law on the settlement of industrial relations disputes is not in accordance with the theory. Industrial relations mediators in this mediation process carry out their duties based on executive functions because they are executive officers. The basis of industrial relations mediators in resolving industrial relations disputes is based on existing legal rules. Not based on a win-win solution.

The success of negotiations at the mediation institution can make a legal product in the form of a Collective Agreement which is registered by the parties to the industrial relations court at the local district court. If negotiations through mediation fail, the industrial relations mediator will issue a written recommendation.

In the absence of an answer from the parties to the written recommendation made by the industrial relations mediator, it can be legally considered that the written recommendation has been rejected. The non-implementation of the written recommendation from the industrial relations mediator is a condition for further examination of the case to the industrial relations court.

There are two legal products of industrial relations mediators, namely collective agreements or written recommendations. Collective agreement is an agreement made based on an agreement between the parties, namely the entrepreneur and the worker who is witnessed by the mediator and registered in the industrial relations court at the district court in the jurisdiction of the party that entered into the Collective Agreement to obtain a registration certificate. If the Collective Agreement is not implemented by the parties or one of the parties, the aggrieved party may apply for execution to the Industrial Relations Court at the District Court in the Collective Agreement Area on the list to obtain an execution determination (Article 13 of the Law on Industrial Relations Dispute Settlement).

The second legal product of the industrial relations mediator is a written recommendation. A written recommendation is a recommendation issued by an industrial relations mediator when an agreement on the settlement of industrial relations disputes through mediation is not reached. A written recommendation rejected by one or both parties becomes a condition for the dispute to be the basis for filing a lawsuit by one of the parties in the industrial relations court at the local district court (Articles 13, 14 of the law on the settlement of industrial relations disputes).

This study takes a case that occurred between 2 workers, namely Samsul Bahri and Sumedi as plaintiffs against PT Sukses Lautan Indonesia (PT Sulindo) as defendants. This decision has permanent legal force. The dispute that occurred between 2 workers and PT Sukses Lautan Indonesia was based on the different perspectives of the parties

on the validity of the reasons for termination of employment. 2 workers as workers from PT Sukses Lautan Indonesia have worked for 18 years 5 months and 19 years 6 months, continuously based on an indefinite work agreement. The employment relationship was terminated because the worker refused to be transferred from PT Sukses Samudera Indonesia in Probolinggo to PT Berkas Agung Indonesia in Tuban on May 30, 2020. The employer's offer to provide severance pay amounting to three times of the basic salary was rejected by the workers.

PT Sukses Lautan Indonesia already has a Collective Labor Agreement which has been ratified by the head of the PTSP investment office and the Manpower office of Probolinggo City based on Decree Number 188.45/42/KEP/425.107/2018 dated 28 September 2018. In article 2 paragraph (4) of the agreement it is stated that there are 7 reasons for the termination of the employment relationship, namely death, the expiration of a certain period of work agreement, the resignation of the worker concerned, old age or retirement aged 55 years, termination of employment, mutual agreement of both parties to terminate the relationship of work, or the worker or laborer serves as the head of a community organization. In Article 6 paragraph (6) of the Collective Labor Agreement, it is determined that the rejection of the transfer is a serious violation and the employee is considered to have resigned.

On the basis of this provision, PT Sukses Samudera Indonesia applies the provisions for termination of employment due to resignation for five workers who have refused the transfer. Manpower regulates the rights obtained by workers due to reasons for resigning, namely resigning based on a resignation letter or resigning because they have been absent for five or more consecutive working days without written information that is accompanied by valid evidence and has been summoned twice by the employer in a proper and written ways.

In this case, efforts have been made to resolve industrial relations disputes through an industrial relations mediation institution. If an agreement is not reached between the parties through a mediation institution, the industrial relations mediator will issue a written recommendation number. 567/1034/425-117/2020 which was issued on July 27, 2020 which provides severance pay for workers to a maximum of three months of wages

There is something interesting in the decision which is related to the substance of the written recommendation from the head of the PTSP investment office and the Manpower Office of Probolinggo city number 567/1034/425-117/2020. The basis for consideration of the industrial relations mediator is that it is recommended to provide a three-month bond of appreciation because there are different reasons for

the termination of the employment relationship between the employer and the worker. The employer considers the termination of the employment relationship due to the resignation of the employee due to a violation of the provisions of Article 6 paragraph (6) jo. Article two paragraph (4) of the PT Sulindo collective work agreement. Workers consider the end of the employment relationship because the employer has unilaterally terminated the employment relationship. The reason PT Sulindo ordered the transfer of two workers from the workplace in Probolinggo to the workplace in Tuban was because the workplace in Probolinggo had closed and was no longer operating. There is no reduction in rights if the worker carries out the transfer work order. The wages given are greater than the wages earned by workers in the Probolinggo workplace and the period of service is calculated to continue to work in the Probolinggo area. In addition, PT Sukses Samudera Indonesia in Probolinggo and PT Berkat Agung Indonesia in Tuban have the same owner

The legal relationship that occurs between employers and workers is based on justifiable reasons according to Law No. 13 of 2003. The rights that a job gets as a result of the termination of employment depend on the reasons. In this case, it is necessary to examine the reasons for the termination of the employment relationship, that the company closed due to losses, employee resignation due to a violation of the CLA

The rights obtained by workers because the company suffers a loss and closes are regulated in article 164 paragraph (1) of the manpower law, namely getting severance pay in the amount of one time under the provisions of article 156 paragraph (2) of the one-time service award provided in article 156 paragraph (3) schedule of replacement of rights in accordance with the provisions of article 156 paragraph (4) of the labor law.

The right obtained by the worker due to the reason for resigning is to get compensation for entitlements, if he fulfills the requirements, he submits a written resignation letter 30 days before the start date of resignation and continues to carry out his obligations until the start date of resignation (article 162 of the labor law). The right obtained from work due to the reason for resigning based on the fact of being absent for five consecutive working days is to receive compensation for entitlements and be given money, the amount and implementation of which is regulated in a work agreement with company regulations or a collective work agreement (article 168 of the labor law).

Two workers who have worked at PT Sukses Samudera Indonesia are categorized as having resigned not under the provisions of Articles 162 and 168 of the Labor Law. Determination of the reasons for resigning for the two workers by the employer because it is based on the provisions of Article 6 paragraph (6) of the Collective Labor Agreement

that already exists at PT Sukses Samudera Indonesia. The Collective Labor Agreement does not stipulate the rights that can be obtained if the worker refuses to transfer. The refusal of the transfer by the two workers is considered to have resigned and is a serious violation and no rights are granted to the workers. The offer given by the employer is to give three times the wages for two workers who refuse the transfer and it is something better than what has been agreed.

It can be interpreted that the panel of judges in the decision of the industrial relations court at the Surabaya district court number 111/Pdt-Sus PHI/2020/PN SBY, are that the two workers, Samsul Bahri and Sumedi have had a working relationship with PT Sukses Samudera Indonesia for 18 years 9 months and 19 years 10 months without interruption with a final wage of Rp. 2,319,796.75 per month. The working relationship ended on August 31, 2020. Samsul Bahri and Sumedi received rights in accordance with the provisions of article 164 paragraph (1) which consisted of severance pay, service period awards, compensation for rights in accordance with the provisions of article 156 paragraphs 2, 3 and 4 of the law employment. Samsul Bahri and Sumedi were also entitled to a processing fee of three months' wages. For these two rights, Samsul Bahri received a right of Rp. 42,684,260 plus Rp. 6,959,390 = Rp. 49,643,650. Sumedi got the rights amounting to 42,684,260 plus Rp. 6,959,390 = Rp. 49,643,650.

The decision of the industrial relations court which is not accepted by either party or both parties may be filed for cassation to the Supreme Court. The decision on Cassation from the Supreme Court on cases of industrial relations disputes cannot be reviewed based on the Circular Letter of the Supreme Court number 3, 2018 starting on March 5, 2018.

The results of the study indicate that the existence of industrial relations mediators is strongly influenced by the quality of the substance of the legal product. The legal product of an industrial relations mediator is a collective agreement or written recommendation. It was found that there were written recommendations containing inappropriate substances. The written recommendation of the Manpower Office of Surabaya City number 34/PHI/II/2022 suggests that employers provide workers with a maximum amount of three months' wages. The contents of this written recommendation are inaccurate, and not in accordance with the substance of Law 13/2003 which categorizes the substance of the object of a dispute as termination of employment because the employer closes his company due to a loss, in accordance with the provisions of Article 164 paragraph (1) of the Manpower Act

4. CONCLUSION AND RECOMMENDATION

The existence of industrial relations mediators is greatly influenced by the quality of the substance of the legal product. The legal product of an industrial relations mediator is a collective agreement or written recommendation. It was found that there were written recommendations containing inappropriate substances. The written recommendation of the Manpower Office of Surabaya City number 34/PHI/II/2022 suggests that employers provide workers with a maximum amount of three months' wages. The contents of this written recommendation are inaccurate, and not in accordance with the substance of Law 13/2003 which categorizes the substance of the object of a dispute as termination of employment because the employer closes his company due to a loss, in accordance with the provisions of Article 164 paragraph (1) of the Manpower Act. The recommendation given is that it is necessary to increase the quantity and quality of education and training of industrial relations mediators in order to be able to produce good quality legal products

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