

Reconstruction of mediation settlement of industrial relation dispute based on justice value in Indonesia

Pristika Handayani¹, Gunarto², Jawade Hafidz³

¹ PhD student of Law Universitas Islam Sultan Agung, Indonesia

² Professor of the Faculty of Law, Universitas Islam Sultan Agung, Indonesia

³ Lecturer of the Faculty of Law Universitas Islam Sultan Agung, Indonesia

Abstract

The purpose of this study is to describe the mediation arrangements in the settlement of industrial relations disputes that do not yet reflect the value of justice in accordance with Law Number 2 of 2004 concerning the settlement of industrial relations disputes, the reconstruction of mediation arrangements in Article 9, 11 and 13 paragraph (2) of Law Number 2 of 2004 concerning the settlement of industrial relations disputes based on justice values. This research is non-doctrinal in socio-legal studies. This research was conducted at the Batam City Government Employment Agencies. This study uses primary data and secondary data (primary legal materials and secondary legal materials). Retrieval of primary data through interviews, while secondary data through document study. Data analysis was performed descriptively-qualitatively. The results of this study indicate that the mediation regulations in the settlement of industrial relations disputes are currently not fair, especially for the workers. Mediation that is not successfully completed through the Government Employment Agencies or for those who feel unjust will proceed to the next stage, which is to go to the industrial relations court. Mediation disputes over industrial relations disputes that have occurred so far have not found justice for the parties to the litigation. The perceived injustice resulted in the parties having to proceed to the next stage or through an industrial relations court. In addition to getting results that are equally beneficial to both.

Keywords: reconstruction, mediation, industrial dispute, justice value

A. Introduction

Disputes in the field of industrial relations that have been known so far can occur regarding established rights, or regarding labor conditions that have not been determined either in employment agreements, company regulations, collective labor agreements or statutory regulations. In Indonesia, the Settlement of industrial relations disputes can be reached by litigation or by court and by non-litigation.

Among these two options, recently in Indonesia many people in dispute tend to use the non-litigation method called mediation. Mediation is an effort to resolve conflicts by involving a neutral third party, who does not have the authority to make decisions that help the parties to the dispute reach a solution (solution) that is accepted by both parties. This alternative method are often get chosen by the parties because of it is less time-consuming and cheaper as it puts forward a mechanism for resolving disputes or conflicts in the event of a crime, something that has not been recognized in the current Indonesian justice system^[1].

Aside from being one of the effective instruments in overcoming the problem of the accumulation of cases in the court of law and at the same time strengthening and

maximizing the function of court institutions in dispute resolution, the institutionalization of mediation into the court process in the court as an effort to institutionalize and utilize mediation in the justice system, so as to encourage the parties to go through the peace process in the process of resolving the dispute. This is in line with the principle of quick, inexpensive dispute resolution, which in turn can provide access.

In Article 9 of law number 2 of 2004 concerning the settlement of industrial relations disputes, it is clear that mediators mediation arrangements are still very rigid and do not fulfill the wishes of those who feel their rights have been violated, the parties feel that their justice has not been fulfilled so to analyze the mediation arrangements in the settlement of relations disputes. Industrial justice is used as a reference to the theory of justice proposed by Aristotle namely legal justice, cumulative justice (exchange justice), and distributive justice^[2]. First, legal justice, namely equal treatment of all people in accordance with applicable law. That means everyone must be protected and subject to the provisions of the law indiscriminately. Legal justice

¹ Roberts Kennedy,(2019), *Penal Mediation Policy According to Indonesian Criminal Laws to the Protection of Criminal Victims Domestic Violence*, International Journal of Multicultural and Multireligious Understanding, Vol 6 Issue 3 June 2019, DOI : <http://dx.doi.org/10.18415/ijmmu.v6i3.1038>

² Carl Joachim Friedrich,(2004), *Filsafat Hukum Perspektif Historis*, Nusamedia, Bandung, p. 23. See, Tatag Wahyu Jatmiko, Penerapan Teori Keadilan Aristoteles dalam Berbagai Aspek, *Jurnal Hukum Online*, <http://kumpulan-teori-keadilan.html>. Date Accessed on 26 May 2014. The same statement can be seen in Bernard L Tanya, dkk, (2010), *Teori Hukum, Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Yogyakarta, p. 44-46.

concerns the relationship between individuals or groups of people and the state. In essence, everyone or all parties are guaranteed to get the same treatment in accordance with applicable law. In the context of labor law, workers and employers must receive the same treatment and position in labor relations so that a sense of justice can be obtained between the two parties. According to legal justice, workers and employers as legal subjects should have a balanced position, even with different duties or obligations. Workers are obliged to carry out their work duties as well as possible to achieve high productivity, on the other hand employers must provide workers' rights in the form of wages or salaries properly and fairly in accordance with work performance that has been given to the company.

Second, commutative justice regulates fair relations between one person and another or between one citizen and another citizen. Commutative justice involves horizontal relations between one citizen and another. In the business world, commutative justice is often referred to as exchange justice. In other words, commutative justice involves a fair exchange between the parties involved. The principle of commutative justice requires that all people must fulfill what they have promised.

Third, distributive justice known as economic justice is an equitable economic distribution or that is considered fair for all citizens. Distributive justice has relevance in the business world, especially in companies, where everyone will get something that is in harmony or balance with what they have been trying. Based on the principle of distributive justice, every employee in a company must obtain a wage or salary distribution in accordance with the achievements, duties and responsibilities given to him. Thus, every employee who has high work performance will get a reward in the form of high wages from the company.

Judging from the operation of the legal system in society as stated by Lawrence M. Friedman^[3], which states that there are three aspects that can affect the social system, including the legal system, namely: (1) aspects of legal substance, (2), structural aspects, and (3) aspects of legal culture. Likewise with the employer worker wage system which is still low that does not reflect the value of justice and welfare for workers and their families, can be analyzed through the three aspects put forward by Friedman.

Based on the description presented in front of, relating arrangement of mediation in the settlement of industrial disputes which do not yet reflect the values of justice according to the Indonesian Labour Employment Law, it can be formulated that will be examined as follows:

1. Is it true that the mediation arrangement in the settlement of industrial relations disputes is not yet fair?
2. How is the reconstruction of mediation arrangements in the settlement of industrial relations disputes based on justice values?

³ Lawrence M Friedman,(1975), *The Legal System: A Social Science Perspective*, Russell Sage Foundation, New York, p.9-12. see Lawrence M Friedman, 2009, *Sistem Hukum, Perspektif Ilmu Sosial*, translated by Moh Khozim, Nusa Media, Bandung, p.15-19. See also As'ad Nugrogo (ed), (2001), *Mencari Keadilan, Bunga Rampai Penegakan Hukum*, Pirac, Jakarta, p. 7-11

B. Method of Research

This study uses a sociological juridical approach and is non-doctrinal in nature, because it uses empirical data obtained from the field^[4]. To solve the problem under study a *socio-legal* approach is used^[5], he author tries to combine juridical aspects and empirical aspects. This research was conducted at the Batam City Manpower Office and Companies in Batam

Data collection techniques are done by interview and document study. Primary data obtained through interviews with respondents. Respondents who were used as sources of information were company workers, company leaders, union officials, and Batam City Manpower officials.

Secondary data obtained through the study of documents, in the form of primary legal materials and secondary legal materials. Primary legal materials in the form of related laws and regulations, while secondary legal materials in the form of legal science books, legal journals, and research reports.

The data analysis technique was conducted descriptively-qualitative, in the form of a deep, holistic, and comprehensive description^[6]. The procedure of analysis goes through stages: data collection, data reduction^[7], data analysis and exposure, and ends with a conclusion. If a simple flow is made, the data analysis includes data categorization, data verification, data interpretation, and conclusion draw^[8].

C. Research Result and Discussion

Based on the formulation of the problem presented, the description of the results of this study is divided into two parts, namely the mediation arrangement in the settlement of industrial relations disputes that does not yet reflect the value of justice, and the reconstruction of the Mediation Rules in the Settlement of Industrial Value-Based Justice Relations Disputes

The relationship between workers / employers and employers is a relationship based on the agreement of the parties to commit themselves in an employment relationship. In the event that one of the parties no longer wishes to be bound in the employment relationship, it is difficult for the parties to maintain a harmonious relationship.

The best dispute resolution is a settlement by the disputing parties so that results can be obtained that benefit both parties. The bipartite settlement is carried out through consensus agreement by the parties without interference from any party. However, the Government in its efforts to provide community services, especially to workers /

⁴ Supranto,(2003), *Metode Penelitian Hukum dan Statistik*, PT Rineka Cipta, Jakarta, p. 3.

⁵ Legal research with a socio-legal approach, seeks to see the object of law as a social phenomenon, which in its analysis often links the law with social problems. See Peter Mahmud Marzuki,(2009), *Penelitian Hukum*, Edisi Revisi, PT Kencana Media, Jakarta, p. 63

⁶ Lexy J Moleong, 2002, *Metodologi Penelitian Kualitatif*, Remaja Rosda Karya, Bandung, p.103

⁷ Data reduction is understood as a process of transition, concentration and simplification, abstracting and transformation of rough data that arises from written records in the field. Data reduction is not a separate thing from the analysis but an inherent part see Matthew B. Miles dan A. Michael Huberman, (1992), *Analisis Data Kualitatif*, Universitas Indonesia Press, Jakarta, p. 16

⁸ Esmi Warassih Puji Rahayu,(1999), *Metodologi Penelitian Bidang Ilmu Humaniora*, Fakultas Hukum Undip Semarang, p. 52, see also Matthew B. Miles dan A. Michael Huberman, *Analisis Data... Op. Cit.*, p. 20

laborers and employers, is obliged to facilitate the resolution of industrial relations disputes. Facilitation efforts are carried out by providing mediators whose task is to bring together the interests of the two disputing parties.

Arrangements regarding the settlement of industrial relations have experienced dynamics / changes. After Indonesia's independence, workplace disputes are termed labor disputes, this is regulated in Law Number 22 of 1957 concerning Settlement of Labor Disputes. This law carries the mission of carrying out the principle of deliberation to reach consensus by establishing a settlement mechanism in stages. The first stage is the dispute left to the parties to negotiate peacefully, then the next stage if no agreement is reached between the two parties and the parties do not choose arbitration (the dividing council) then one of the parties can notify the employees of the Ministry of Labor in writing to give intermediaries, namely those listed in Article 3 of Law Number 22 Year 1975 concerning the Settlement of Labor Disputes, which is the mediation carried out by the Regional / Central Labor Dispute Settlement Committee (P4). If the parties declare that they choose to settle voluntarily using arbitration or a council / interpreter then the intention must be stated in writing ^[9].

The explanation regulated in Law Number 22 Year 1957 shows that the government's legal policy governing the settlement of labor disputes by consensus agreement is in the context of encouraging the active role of workers / laborers and employers / employers to conduct peace negotiations first before involving the government. This is due to previous experience when the enactment of Emergency Law No. 16 of 1951 (which revoked the Military Regulations on the Military Authority (Central) Number 1 of 1951) where the parties were passive and tended to submit solutions to the committee (the government) ^[10].

It is expected that the issuance of PERMA No. 1 of 2016 concerning mediation procedures in court can address the weaknesses of PERMA No. 1 of 2008. Mediation is effective because the process is faster and cheaper, and provides access to the parties to the dispute to obtain justice. The success of mediation as an alternative dispute resolution in the Court is needed by the justice seekers community, in addition to reducing the accumulation of cases that occur.

By resolving disputes in mediation there are at least eight (8) benefits gained, namely ^[11];

1. To reduce congestion and case *congestion in the* judiciary. The number of cases filed with the court results in court proceedings often being prolonged and costly and providing unsatisfactory results.
2. To increase community involvement or empower disputing parties in the dispute resolution process.
3. To expedite *access to justice* in society.

4. To provide an opportunity for the achievement of dispute resolution which results in a decision that can be accepted by all parties (*win-win solution*)
5. Dispute resolution is faster and cheaper.
6. Are closed / confidential (*confidential*).
7. A higher level of possibility to carry out an agreement, so that the relationship between the parties to the dispute in the future is still possible well established.

In Law Number 22 Year 1957 that the initial stage of labor dispute settlement should be carried out by the parties to the dispute by prioritizing consensus agreement. If there is a failure or an agreement is not reached between the two parties, the next step is to use the government as a medium for its resolution. This law is not regulated or does not recognize the litigation model (court) as introduced as stated in the Industrial Relations Dispute Settlement Act, although there are known arbitrations but are not fully subject to the provisions of arbitration in general, such as for example if the parties the dispute agrees that the arbitrator can be from the dispute resolution employee / committee.

In the mediation carried out by the parties that were previously carried out in a bipartite manner, in this case the workers and employers if they do not get the results expected by the workers, the next step that must be taken is the mediation stage which is carried out at the local manpower office. The mediator in this case is the Manpower Office (often abbreviated as DISNAKER). In this stage the mediator, namely the mediator, will issue a summons to each party in the case. Where in conducting such mediation a minimum of 3 (three) meetings are held, the schedule of which is determined by the Mediator. In the mediation process, each party is questioned by the Mediator, as well as the parties to the litigation show the evidence that is owned, which benefits the parties, then followed up by the Mediator by issuing a Letter of Recommendation containing the rights and obligations of each party, then the parties or one of the parties who object to the recommendation letter issued by the Mediator, the parties or one of the parties can continue the dispute settlement to the Industrial Relations Dispute Court at the local District Court in accordance with article 14 paragraph (1) of Law Number 2 2004 concerning Settlement of Industrial Relations Disputes.

Unlike the judge or arbitrator, the mediator in this case does not have the authority to decide disputes between the parties but the parties authorize the mediator to help them solve the problems between them. " *The assumption... is that a third party will be able to alter the power and social dynamic of the conflict relationship by influencing the beliefs and behavior of individual parties, by providing knowledge or information, a more effective negotiation process and*

⁹ Agusmidah,(2018), *Mekanisme Penyelesaian Perselisihan Hubungan Industrial Yang Efektif*, international symposium on employment, Bandung, Universitas Katolik Parahyangan, on date 26-27 Juli 2018

¹⁰ *Ibid*

¹¹ Golberg, F. Sander, and N.H. Rogers.(1992), *Dispute Resolution: Negotiation, Mediation, and Ather Process* Boston Toronto, Little Brown and Company, p. 8

helping the participants to settle contested issues ” (the assumption is that third parties will be able to change the strength and social dynamics of conflict relations by influencing the trust and behavior of the parties / individuals of the parties, by providing knowledge or information, or by using a more effective negotiation process and thus help participants to resolve disputed problems) ^[12].

Justice is one of the very principles contained in Pancasila, which is contained in the 5th Precept, which reads "social justice for all Indonesian people" which has a symbol of rice and cotton which means that every citizen has rights and obligations that together in creating social justice in social life. Social justice is the nature of a just and prosperous society that is happy for everyone, no humiliation, no exploitation, material happiness and spiritual happiness, physically and mentally. The word fair here shows that people must give to others what they are entitled to and know what their own rights are and know what their obligations are to others and themselves. Social means not only selfish but prioritizing the public interest, not individualistic and egoistic, but acting for the common good.

Based on the aforementioned description, in order to achieve justice in accordance with the law he guided in Law Number 2 of 2004 concerning the settlement of industrial relations disputes, it is necessary to carry out reconstruction of 3 (three) Articles as follows ^[13]:

D. Conclusions

- a. From the discussion it can then be concluded that the mediation regulation in the Settlement of industrial
- b. relations disputes is currently not fair, especially for the workers. Mediation that is not successfully completed through the Department of Manpower or for those who feel unjust will proceed to the next stage, which is to go to the industrial relations court. Mediation disputes over industrial relations disputes that have occurred so far have not found justice for the parties to the litigation. The perceived injustice resulted in the parties having to proceed to the next stage or through an industrial

relations court. in addition to getting results that are equally beneficial to both but also reduce the build-up of cases in court. Mediation must prioritize both parties not to win only those in power.

- c. Reconstruction of mediation regulations in the settlement of industrial relations disputes based on justice values, namely Article 9, 11 and Article 13 paragraph (2) of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, namely:

In Article 9 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes which states that the mediator:

1. Must be neutral, authoritative, honest, fair, behave impeccably
2. Have Strata at least two (S 2) the law, and experienced in the field at least 5 (five) years
3. Have a mediator certificate of industrial relations dispute resolution issued by the competent institution.

Whereas Article 11 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes reads that:

1. The mediator is obliged to summon witnesses to attend the mediation hearing to request and hear their statements
2. The mediator can call experts to be consulted as experts
3. Witnesses and expert witnesses to the call Menda pat kan honor arium, travel and accommodation expenses as a witness or expert witness.
4. The costs of witnesses and expert witnesses are the responsibility of the parties concerned.

Whereas Article 13 paragraph (2) of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes reads that: If one party still refuses / objects to the written recommendation of the mediator, the mediator must call the parties to continue mediation 1 (one) time again in order to reach an agreement or produce a *win win solution*.

¹² Garry Goodpaster,(1995), *Arbitrase di Indonesia*, Jakarta, Ghalia Indonesia, p.12.

¹³ Bernard L. Tanya dkk,(2014), *Pancasila Bingkai Hukum Indonesia*, Jakarta, p. 54.

Reconstruction of Article 9 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes

Table 1

Article 9 of Law No. 2 of 2004	Weaknesses Article 9 of Law No. 2 of 2004	Reconstruction of Article 9 UU no. 2 of 2004
<p>The mediator as referred to in Article 8 must meet the following requirements:</p> <ul style="list-style-type: none"> a. Believe and fear God Almighty b. Indonesian citizens c. Healthy body according to a doctor's certificate d. Mastering the legislation in the field of employment e. Authoritative, honest, just and behaves without reproach f. Educated at least Undergraduate (S1), and g. Other requirements set by the Minister 	<p>The rules stipulated in this law do not regulate how the mediator mediates the settlement of industrial relations disputes that occur. Specific provisions for the stages so that the mediator has an obligation to continue to seek peace between the two parties.</p>	<ul style="list-style-type: none"> a. Stay on b. Stay c. Permanent d. Stay <p>Must be neutral, authoritative, honest, fair, behave without reproach</p> <ul style="list-style-type: none"> f. Educate at least a bachelor degree (S2) in law and have experience in the field for a minimum of 5 (five) years g. Has a mediator certificate of industrial relations dispute resolution issued by the competent institution

Reconstruction of Article 11 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes

Table 2

Article 11 of Law No. 2 of 2004	Weaknesses Article 11 of Law No. 2 of 2004	Reconstruction of Article 11 of Law No. 2 of 2004
<ul style="list-style-type: none"> (1) The mediator may summon expert witnesses to attend the mediation hearing to request and hear their statements (2) Witnesses or expert witnesses who fulfill the summons are entitled to receive reimbursement for travel and accommodation costs, the amount of which is determined by Ministerial Decree 	<p>The mediator does not call witnesses who are aware of the dispute so the mediator can conclude and issue recommendations according to the wishes of both parties.</p>	<ul style="list-style-type: none"> (1) a. Mediators must call witnesses to attend the mediation session to request and hear their statements b. Mediators Can Call Expert Witnesses to Be Asked for Their Opinions as Experts (2) Witnesses and Expert Witnesses Who Meet the Calls for Honors, Travel and Accommodation Costs as Witnesses or Expert Witnesses. (3) The costs of expert witnesses are the responsibility of the interested parties.

Reconstruction of Article 13 paragraph (2) of Law Number 2 Year 2004 concerning Settlement of Industrial Relations Disputes

Table 3

Article 13 paragraph (2) of Law No. 2 of 2004	Weaknesses Article 13 paragraph (2) of Law no. 2 of 2004	Reconstruction of Article 13 paragraph (2) of Law no. 2 of 2004
<p>In the case where no industrial relations dispute resolution agreement is reached through mediation, then:</p> <ul style="list-style-type: none"> a. The mediator issues a suggestion b. Written advice as referred to in letter a not later than 10 (ten) working days from the first mediation session must have been submitted to the parties c. The parties must have given a written response to the mediator whose contents approve or reject the written suggestion within no later than 10 (ten) working days after receiving the written suggestion d. Any party who does not give his opinion as referred to in letter c is deemed to reject written recommendations e. In the event that the parties agree to the written recommendation as referred to in letter a, within no later than 3 (three) working days after the written recommendation is approved, the mediator must have finished assisting the parties to make a joint agreement to then be registered at the Industrial Relations Court at the District Court in the jurisdiction the parties enter into a joint agreement to obtain a proof of registration deed. 	<p>To resolve industrial relations disputes between disputing parties the mediator is still very limited by time, and the process of resolving disputes is ineffective because the mediator mediating the disputing parties is not optimal to reconcile the two.</p>	<ul style="list-style-type: none"> a. Permanent b. Permanent c. Permanent d. Permanent e. If one of the parties still refuses / object to the written recommendation of the mediator, the mediator must endeavor to continue mediation again in order to reach an agreement or produce a <i>win-win solution</i>.

References

1. As'ad Nugrogo (ed), *Mencari Keadilan, Bunga Rampai Penegakan Hukum*, Jakarta, Pirac, 2001.
2. Bernard Tanya L, dkk, *Teori Hukum, Strategi Tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta, Genta Publishing, 2010.
3. Esmi Warassih Puji Rahayu. *Metodologi Penelitian Bidang Ilmu Humaniora*, Semarang, Fakultas Hukum Undip, 1999.
4. Garry Goodpaster. *Arbitrase di Indonesia*, Jakarta, Ghalia Indonesia, 1995.
5. Golberg Sander F, Rogers NH. *Dispute Resolution: Negotiation, Mediation, and Ather Process* Boston Toronto, Little Brown and Company, 1992.
6. Joachim Friedrich. *Filsafat Hukum Perspektif Historis*, Bandung, Nusamedia, 2004.
7. Lawrence Friedman M. *The Legal System: A Social Science Perspective*, New York, Russell Sage Foundation, 1975.
8. *Sistem Hukum, Perspektif Ilmu Sosial*, Bandung, Nusa Media, 2009
9. Lexy Moleong J. *Metodologi Penelitian Kualitatif*, Remaja Rosda Karya, Bandung, 2002.
10. Matthew B, Miles dan Michael Hubermen A. *Analisis Data Kualitatif*, Jakarta, Universitas Indonesia Press, 1992.
11. Peter Mahmud Marzuki. *Penelitian Hukum*, Edisi Revisi, Jakarta, PT Kencana Media, 2009.
12. Supranto. *Metode Penelitian Hukum dan Statistik*, Jakarta, PT Rineka Cipta, 2003.
13. *Undang-Undang Nomor 2 Tahun tentang Penyelesaian Perselisihan Hubungan Industrial*, 2004.
14. *Undang-Undang Nomor 13 Tahun tentang Ketenagakerjaan*, 2003.
15. *Undang-Undang Nomor 22 Tahun 1957 tentang Penyelesaian Perselisihan Perburuhan*
16. *Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 tentang Prosedur Mediasi Di Pengadilan*
17. Agusmidah, *Mekanisme Penyelesaian Perselisihan Hubungan Industrial Yang Efektif*, Simposium Nasional Hukum Ketenagakerjaan, Bandung, Universitas Katolik Parahyangan, Pada Tanggal 26-27 Juli 2018
18. Jatmiko, Tatag Wahyu, "Penerapan Teori Keadilan Aristoteles dalam Berbagai Aspek", *Jurnal Hukum Online*, <http://kumpulan-teori-keadilan.html>
19. Roberts Kennedy. *Penal Mediation Policy According to Indonesian Criminal Laws to the Protection of Criminal Victims Domestic Violence*, *International Journal of Multicultural and Multireligious Understanding*, 2019, DOI: <http://dx.doi.org/10.18415/ijmmu.v6i3.1038>.