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**Research Paper**

# The Law Enforcement to the Worker's Rights Infringement

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***ABSTRACT*:-** Working relation was born after signing and agreed the working agreement between the employer and employee are made based on the principle of consensus and freedom to contract. After signing the work agreement, arising rights and obligations that must be conducted and adhered to by both parties. Work agreements made should qualify the validity of agreement as provided for in Article 1320 of Civil Code joArticle 52 of Act No. 13 of 2003 and should not be contrary to the public interest and the legislation. In general, the working relation between employers and employeesbeside stipulated in labor agreements, company regulations or collective agreements have been arranged in a variety of legislation in the field of labor. However, the implementation of working relation does not always work according to the agreement. The existence of employees in a working relation is in a weak position, so that their rights are often infringed by employers. Therefore, the government issued Act No. of 2014 as a means of legal protectionthat governing law enforcement procedure against employee's rights infringement.

***KEYWORDS:-*** *Legal Protection, Employee, Labor, Industrial Relations*

## I. INTRODUCTION

Employees as an element of nation, have a role and a very important position as actors and development purposes.[1] These roles appear in the field of industrialization. In the context of industrial relations, employee is a partner of employer. As a partner, ideally the position of employee should equal or equivalent to the employer, in the sense that employee have equal *bargaining position* with employerin determining and establishing clauses contained in the working agreements, including the condition of psychology between employee and employers against the threat of employment termination (hereinafter written as layoff). In other words, for both employee and employers have a shared interest in maintaining a working relation (*partners*) and if the partnership cannot be maintained then ideally the psychology of workers and employers was equal that is to feel a loss or lack something that is needed in life or their business.

The expectation is much different from the facts. The position of employee is very weak than the employers, even some employee are resigned to the condition or form of working relation which is determined unilaterally by the employer. This condition is influenced by many factors, particularly the availability of jobs that are not balanced with the rate of growth of labor force (*job seekers*). This condition is compounded by weak labor skills or resources, so it is not able to compete in the world of work, both on a local and global level.

The existence of employee as a partner of employer who play an important role in development, should receive extra attention from the government. The existence of employee often marginalized and received inhumane treatment by employers, especially relating to the exploitation of labor power. Workers as human beings and as citizens of Indonesia have the same rights with humans or other citizens. Therefore, the presence of workers and the slightest role of workers against the state, the government should recognize and protect their human rights, because the human rights are rights granted by God brought by human since was born.

Normatively,the government's regulation in the field of labor is sufficient. Setting working relation explicitly and implicitly contained in the various legislations in the field of labor. However, the implementation of rights and obligations of the parties is not always run smooth accordance with the provisions of the legislation. In the implementation of working agreement which is the basis of working relation between employee and employers often infringed by one party (*breach of contract*) which resulted in a loss for the other

[1] Preamble to consider Act No. 13 of 2003 about Labor

party. The threat of sanctions provided for in the law will not mean anything without the law enforcement process, although recognized by SukartonMarmosujono, that one factor that determine the effectiveness of law enforcement is a system of sanctions.[2]

In the context, needed an institution as a means of legal protection and the rights enforcement of the parties, especially for employee in the socio-economic is in a weak position. Law enforcement agency or institution requires a legal instrument that can provide certainty of implementation of rights and obligations in the working relation. The emergence of disputes between employee and employers or between labor unions with other within in a company in fact can be understood;therefore the interests of each party sometimes are not always aligned, so needed a regulation that governing the solution of disputes between employee and employers or between the unions in a company.

Recently, in industrialization era, advancement of science and information technology, impacted on industrial disputes are increasingly complex. For solution, need institutions that support a mechanism to solve dispute in fast, accurate, fair and low-cost. While in Act No. 22 of 1957 concerning Labor Dispute Settlement and Act 12 of 1964 concerning LaborTerminationin Private Companies are no longer suitable to the development of situation and the needs above. Therefore, the government has issued Act No. 2 of 2004, promulgated on 14 January 2004 in the Official Gazette of the Republic of Indonesia of 2004 No. 06, and be valid 1 (one) year after its enactment, precisely on 14 January 2005.

## II. THE FORMULATION OF PROBLEM

As described above, the formulation of problem is "how the law enforcement against workers' rights infringement in the system of industrial relations in Indonesia?"

## III. RESULTS AND DISCUSSION

Legal efforts are part of judicial process in order to achieve legal certainty. Law enforcement is impossible without legal protection will be achieved, as stated by Philip M. Hadjonthat law enforcement is the implementation of legal protection,[3] and Immanuel Khantstates that legal protection issues cannot be separated by law state, where the key element in the law state (*rechtstaat*) is the protection of human rights.[4]

A function of laborlaw is to provide legal protection to workers who are socio-economically under pressure by employers. To provide legal protection, the rights and obligations of both parties has been set in the various legislations in the field of labor, which is then contained into working agreements, company's regulations or collective agreements.

If the working relations, there are normative rights of workers are not obtained in accordance with working agreements, company's regulations, collective agreements or legislation, then the worker can perform the remedies as stipulated in Act No. 2 of 2004 concerning Industrial Relations Dispute Settlement. Procedurally, a mechanism of industrial relation dispute settlement consisting of two phasesthat is the settlement outsidethe court (*non-litigation*) and the settlement through the court (*litigation*). The settlement through litigation is mandatory, because in accordance with the provisions of Article 88 of Act No. 2 of 2004 required that the submission of a claim to the Industrial Relations Court must attach the treatise of settlement through mediation or conciliation, if the conditions are not met, then the judge is obliged to return the claim to the plaintiff.

Based on these provisions it can be deduced that the settlement of industrial disputes outsidethe court is mandatory to do by the parties to the dispute. The settlement of dispute outside the court must begin through deliberation process (*bipartite*) without involving a third party as a mediator. If the process does not reach an agreement, the next process through a tripartite body consisting of conciliation, mediation, and arbitration.

## IV. SETTLEMENT THROUGH BIPARTITE MECHANISM

Any dispute settled by deliberation is more favorable than involving a third party as a mediator and assist the parties in settling the dispute. This is in aligning with the spirit and mandate of Pancasila[5] as the

[2]LannyRamli, PenegakanHukum Terhadap Jaminan Sosial bagi Tenaga Kerja Melalui Sanksi Administratif, Thesis, Postgraduate Program, UNAIR, 1994, page. 7

[3]Philipus M. Hadjon (1).Perlindungan Hukum bagi Rakyat di Indonesia sebuah Studi tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara, Bina Ilmu, Surabaya, 1987, page. 2

[4]Morisson, Hukum Tata Negara RI Era Reformasi, Ramdina Prakarsa, 2005, page. 106

[5] The principle of deliberation to reach an agreement that is contained in the Fourth Principle, suggested to the bound parties with the working relation in order to try to eliminate the differences and find similarities towards agreement, and believes that any problems that arise are not resolved by force unilaterally but are looking for the best solution which is beneficial to both parties.

"spirit" of the industrial relations system adopted by Indonesia. Deliberation made by the conflicting parties without the intervention of other parties, can reduce costs and faster settlement time, and reached agreements bring benefits to both parties. Therefore, Act No. 2 of 2004 requires that any industrial dispute occurring, first settled by negotiation "bipartite".

Settlement through bipartite negotiation is mandatory, because if one party or both parties to register their dispute to the responsible agencies in the field of labor, without attaching proof as an effort to bipartite negotiations, then agency receives return the file to be completed no later than 7 (seven) days after receipt date of bundle return. Bipartite negotiations must be completed within 30 (thirty) workdays, and if the time is not reached agreement, the negotiations failing, and then one party or both parties to register their dispute to the responsible agencies in the field of labor.The procedures for bipartite dispute settlement are:

1. Negotiations conducted by deliberation made the treatise and signed by both parties, and includes:
   a. Names and addresses of the parties;
   b. Date and place of negotiations;
   c. The principal case or dispute reasons;
   d. Parties' argument;
   e. Conclusion or outcome of negotiations;
   f. Date and signature of parties to negotiate.
2. If the deliberation made reach an agreement, made a collective agreement which is binding, signed by the parties and become law and must be implemented by the parties.
3. The collective agreement is registered to PHI in the region of District Court of parties made a collective agreement to obtain collective agreement registration deed and are an integral part of the collective agreement, and if one party does not implement the results of agreement, the injured party may request the petition to PHI to the region of District Court of the collective agreement to registered for the determination of executions.
4. If the petitioner domicile outside the District Court where registration of a collective agreement, the petitioner may submit a petition through PHI in the District Court in the region of petitioner domicile, to be forwarded to the competent PHI.

Observing the procedure of bipartite settlement is clear that the agreements made in the form of collective agreements guaranteed by law to be implemented through forceful measures.

***Settlement through Mediation***

The settlement of dispute through mediation is conducted by mediators who are in every agency office responsible in the field of laborboth districts or city. Definition of mediation can be found in the published literature, among others cited by Joni Emirzon:[6]

1. **John M. Echols and Hasan Umar**, *Mediation* is the settlement of dispute by mediate. *Mediator* is a person who becomes a mediator.
2. **Moore**, mediation is an intervention for a dispute or negotiation by a third party acceptable, impartial and neutral who does not have the authority to take a decision in helping the disputing parties in an effort to reach an agreement voluntarily in the settlement of problems.
3. **Folberg& Taylor**, mediation is a process in which the parties with the assistance of person or a few people systematically resolve disputed issues to reach a settlement that can accommodate their needs.
4. **MuchammadZaidun**,[7] mediation is an intervention into a dispute or negotiation, by a third party acceptable to the disputed parties, not part of the parties and neutral. Then he argues that qualifications of mediator concerning aspects[8] of knowledge in the field of the disputed,has skills, competence and experience in the field of negotiation/mediation, and personal integrity.

As definitions above, it can be concluded that mediation is a dispute settlement by agreement of the parties to choose the mediation way that facilitated by someone or more mediators that are "neutral" and does not make a conclusion or decision but only as a facilitator for the parties to dialogue and making a collective agreement. So, no one definition or theory reveals that the mediator must be of specific group but only determine the minimum requirements to become a mediator.

The above definition is contrary to the provisions in Article 1 point (12) of Act No. 2 of 2004 that the mediator should "employees of government agencies" are responsible in the field of labor that meet the requirements as mediator determined by the ministers to serve to mediate and have the obligation to provide a

[6]Joni Emirzon, AlternatifPenyelesaianSengketa di LuarPengadilan (Negosiasi, Mediasi, Konsiliasi, Arbitrase) PT. Gramedia Pustaka Utama, Jakarta 2001, pages. 67-68.
[7]MuchammadZaidun, *outline*matakuliah strategi *PSA,* 2008, page. 1
[8]*Ibid*, pages 3-5

written recommendation to the disputed parties. With the provisions of mediator is civil servant, giving an indication that the government is still intervene mediation agency in the industrial relations. Its excesses, the mediators are not independent in facilitating the disputing parties.[9]

Definition of mediation in accordance with Article 1 (11) of Act No. 2 of 2004 is the settlement of disputes over rights, conflict of interest, dispute of employment termination and disputes between labor union in a company through deliberations by one or more of a neutral mediator. While the mediator is employees of government agencies responsible for employment who meet the requirements as mediator assigned by the minister to mediate and obliged to provide a written recommendation to the disputed parties for the settlement of disputes over rights, conflict of interest, employment termination, and labor union in just one company.

As the definition abovethat the mediation conducted by a neutral third party, but as mediators are employees of government agencies. Here happens contradictory, should that be the mediator is anyone who is appointed and approved by both parties who have the expertise and capability, whether from the government or other parties throughout meet the requirements to become a mediator.[10]

No compulsion for settlement through mediation between the parties and the mediator. The parties voluntarily requested the mediator to assist in the settlement of disputes. Therefore, the mediator is only to assist the parties to reach an agreement that can only be decided by the disputing parties. As a party to the disputed outside mediator has no authority to compel, the mediator is obliged to meet and bring the disputing parties. After knowing its position case, mediators arrange the proposal for settlement that offered to the disputing parties. Mediator must be able to create conducive condition that can guarantee the creation of a compromise between the disputed parties to obtain the win-win solution.

To smooth the process of mediation, the mediator may call witnesses or expert witnesses to attend in mediation court to be heard and requested information. For that, shall provide information including opening the book and show the necessary letters. If someone requested information because the position must maintain confidentiality, it must be taken a procedure as stipulated in the legislation. Mediator must complete its work no later than 30 working days from receiving the delegation of Industrial Dispute Settlement.

The role of mediator in resolving industrial relations disputes in the region of Central Sulawesi province is quite significant. This is illustrated in the table below:

**Table 1List of Industrial Relation Dispute CasesIn Central Sulawesi Province**

| Year | Reported Case | Resolved Cases with Collective Agreement | Percentage |
|---|---|---|---|
| **2010** | 131 | 125 | 95,42 |
| **2011** | 110 | 87 | 79,09 |
| **2012** | 25 | 19 | 76,00 |
| **2013** | 133 | 101 | 75,94 |
| **2014** | 189 | 153 | 80,95 |

**Source: Department of Labor of Central Sulawesi Province, 2015**

The data is combined cases of industrial disputes that occur in the region of Central Sulawesi and mediated by mediators both existing at the district or city and in the Department of Labor, Central Sulawesi Province.

[9] The independence of mediator could be marred due to several reasons:

1. Theoretically, the government is a party in industrial relations which has the responsibility to create a conducive atmosphere in industrial relations, so that politically it will create the conditions despite having to sacrifice the things that are ideal (the politicization of mediator role). This is contradictory to the provision that the mediator must be a third party who is not a disputed party.

2. In relation to the first point, a civil servant appointed by the minister to be a mediator structurally still tied with the command line to the leader, so that in the particular case (*casuistic*) will get pressure of leader for a particular purpose so as to make loss of independence (mediator already not neutral).

3. A dilemma for mediators comes from the civil servants between the tasks of mediator to work professionally without a tendency, and on the other hand as a civil servant who was given the responsibility in the field of industrial relations, which has the obligation to create conduciveatmosphere. In such a position will possibly use his capacity as mediator to conduct its main task as public who responsible servants in the field of labor. This action is legitimate if not ignoring the principles and objectives of mediation, and not prejudice to the parties.

[10]LaluHusniPenyelesaianPerselisihanHubungan Industrial Melalui Pengadilan & di Luar Pengadilan, Raja Grafindo Persada, Jakarta, 2004, page 60

The level of mediator's successfulannually over 75%. This suggests that the process of industrial disputes settlement through mediation to be effective so that provide a positive impact on the harmonization of working relation between employers and employee, as well as to eliminate the worker's rights infringement.

The disputed parties and not reach an agreement given the written recommendation by mediator as a formal requirement to submit claim to PHI.

***Settlement through Conciliation***

Settlement through conciliation is conducted through one or more persons or entities as mediator called conciliator by confronting or facilitating the disputed parties to settle their disputes peacefully. Conciliators participate actively to provide solutions to the disputed issues.[11]

Conciliation is a process of dispute settlement by handing it over to a commission of people who are appointed to explain the fact and (usually after hearing the parties and to ensure that they reach an agreement), made recommendation for a settlement, but the decision is not binding.[12]

Article 1 paragraph 13 states that conciliation is the settlement of interest disputes, employment termination, or disputes between trade unions within a company, through deliberations by one or more conciliators are neutral. While the conciliator is one or more persons who meet the requirements as a conciliator designated by the minister, and has a duty to conduct conciliation and shall provide a written recommendation to the disputed parties to settle the conflict of interest, employment disputes, or disputes between trade unions within a company.

As mentioned above, it is clear that a conciliator comes from third parties who are not employees (civil servant) in government agencies responsible for labor affairs. In contrast to the mediator comes from employees in government agencies responsible for labor affairs. The scope of disputes that can be handled by mediatori.edisputes over rights, whereas by conciliator dispute cannot be handled. Not given the right dispute to be handled by conciliator is questionable. The reason, do not get the impression of authority monopoly or confuse conciliator's ability to handle disputes over rights/law, but the requirements to become a conciliator is equal to become a mediator, that is:

- Faithful and devoted to God Almighty
- Indonesian citizen;
- Education level at least one degree (S1);
- Age at least 45 (forty-five) years;
- Healthy in accordance with a doctor's certificate;
- Charismatic, honest, and well-behaved;
- Experience in the field of industrial relations at least 5 (five) years
- Mastering the legislation in the field of labor.

Author arguesthe requirement of age at least 45 years to be appointed as a conciliator and as a form of legal discrimination made by the government. This requirement is not very objective, because eliminate part of citizen's rights who do not yet 45 years old to participate in industrial relations. This requirement should be deleted, since there is no guarantee that people aged 45 years or more is competent and capable as a professional conciliator. Likewise, there is no guarantee that ensures that people are not yet 45 years old are not competent and professional to be a conciliator. The most important requirement as researcher's view and must be listed is a candidate of conciliator should be able to work professionally and have high integrity which can be proven by tracing the track record of candidate.

***Settlement through Arbitration***

In general, settlement through arbitration has been regulated in Act No. 30 of 1999 concerning arbitration and alternative to settle a dispute in force in the field of business. Therefore, industrial relations arbitration as regulated in Act No. 2 of 2004 was a special arrangement for the settlement of disputes in the field of industrial relations in accordance with the legal principle of *lexspecialisderogatlexgenerali*.

The term of *arbitration*[13]comes from the *Arbitrare* (Latin) whose meaning is the authority to decide the dispute based on discretion. Subekti said that arbitration is the settlement of a dispute (case) by a person or some arbitrators are jointly appointed by the disputed parties that to not be settled through the courts.[14]While the term of arbitration according to Act No. 30 of 1999 Article 1 paragraph 1 of Act No. 30 of 1999, the arbitration is a way of solving civil disputes outside the public trial based on the arbitration agreement made in writing by the

[11]LaluHusni , *Op. Cit*, page 66

[12] Oppenheim in *ibid*, page. 91

[13]BasukiReksoWibowo, PenyelesaianSengketaMelaluiArbitrase (Bahan Ajar untuk PPS FH Unair), 2007

[14] Joni Emirzon, *Op. Cit*, page 97

disputed parties.While the arbitrator is a person or disputed parties or appointed by the district court or the arbitration institution, to give a decision regarding a particular dispute submitted to settle.

The arbitration agreement[15] is not conditional agreement or *voorwaardelijkeverbentenis*. Therefore, the implementation of arbitration agreement is not dependent on a specific agreement in the future. It does not question the implementation of agreement, but only questioned the way and authorized institutions to settle disputes between the disputed parties.

Arbitration in accordance with the provisions of Article 1 point 15 of Act No. 2 of 2004 is the settlement of a dispute over interests and disputes between trade unions/labor unions within a company, outside the courts through the written agreement of the disputed parties to submit the settlement of dispute to the arbitrator whose decision is final and binding. While arbitrator is one or more are appointed by the disputed parties from the list of arbitrators established by the minister to give a decision concern disputes over interests and disputes between trade unions within a company submitted a settlement through arbitration and the decision is final and binding.

So, the settlement through arbitration must be made through a written agreement of disputed parties to submit the settlement of case to the arbitrator whose decision is final, in the sense that there is no ordinary legal remedies that can be taken except a reason in accordance with Article 52 of Act No. 2 of 2004, the party did not receive may submit for reconsideration to the Supreme Court.

Disputes can be handled by the arbitrator only disputes over interests and disputes between trade unions within a company. This also is not clear why, but the requirements for arbitrator are very strict that is has experience in the field of industrial relations at least 5 years and mastering the legislation in the field of labor as well as exam in arbitration as evidenced by a certificate.[16]

Based on the description of how the Industrial Dispute Settlement ranging from bipartite, mediation, conciliation and arbitration are clear that the settlement through arbitration for the disputed parties must bear all the costs, especially the cost of calling witnesses and expert witnesses and its accommodation. The settlement through mediation and conciliation,the cost borne by the state. A question that needs to be addressed and criticized is why the mediator must come from employees of government agencies responsible for laboraffairs? And why only mediator who is authorized to settle disputes over rights? In other words, whether the legislator considers that the only mediators who have expertise in legal disputes so as arbitrators and conciliators are not authorized to handle and to settle disputes over rights.If occur, it indeed an inconsistency legislator that establishes competence requirements or knowledge in the field of labor and experience in the field of industrial relations for a person to be appointed as conciliator and arbitrator, but ultimately the competence and the experience did not get the appreciation in the form of granting authority such the authority given to the mediator as a personification of state/government.

## V. CONCLUSION

As described above, the author concluded that the procedure of industrial relations dispute settlement as stipulated in Act No. 2 of 2014, in general showed improvements in the aspects of law enforcement and worker's rights protection. The recognition of individual workers as disputed parties in the industrial relation disputes as a form of recognition of human rights, especially workers in order to assist their rights in the court.

At the level of non-litigation, need a change of concept and our mindset to maintain the rights of parties to the working relation. Tripartite settlement through the conciliation agency, mediation and arbitration are mandatory required for the disputed parties. According to the author, the concept of obligation should be changed to the concept of rights. So, the way to settle a dispute in non-litigation is a right of parties. Therefore, the parties are not only free to choose one of them, and if there is no choice to go through mediation agency, but the parties are also free not to choose and make the settlement of disputes through tripartite institutions. That is, if there is no tripartite agency agreed by the parties, one party or both parties can directly submit a claim to the court or PHI without through the process of bipartite settlement.

[15] M. Harahap, dalamSuyudMargono, *Op. Cit* page, 115

[16]Relating toauthor's critiquefor theexistence ofmediatormust come frompublic servant who responsibleinthe field of labor, then theauthority ofarbitratorshould be the same with theauthority given to themediatorforthe proceduresand requirements forthe appointment ofan arbitratorinthe field ofindustrial relations, as strict asthe recruitment ofmediators, somustbe consideredthat thearbitratoris ableandcompetentto settle legaldisputes(right) and employment termination. Based on the explanation, it is notunreasonable todoubtthe competenceof arbitratorto settle legal disputes. This factfurtherindicatesarroganceandexcessive governmentinterventionon industrial relations, especially in terms ofsettlement of disputesbetweenemployee and employers.

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