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Industrial Relations Dispute Settlement at the Industrial Relations Court (PHI) in Indonesia and the Application of Procedural Law

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Problems that occur between workers/laborers and entrepreneurs who are bound in an employment relationship are called industrial relations disputes. To date, the settlement of industrial relations disputes through the Industrial Relations Court (PHI) has not been deemed able to provide a sense of justice to workers/laborers and entrepreneurs. One of the reasons why industrial relations disputes have not been resolved optimally through the Industrial Relations Court (PHI) is because the current procedural law uses civil procedural law that applies to the general court environment, where the civil procedural law is largely a legacy of the Dutch colonial which is no longer appropriate. with the development of the needs of the Indonesian people both in principle and in the rules it regulates. In this case, it is formulated, How the settlement of industrial relations disputes at the Industrial Relations Court (PHI) is related to the applicable procedural law, as well as the concept of reforming fair procedural law in the settlement of industrial relations disputes in the context of developing industrial relations courts in Indonesia. The research specification in this study is descriptive-analysis, with a normative juridical approach, namely: research that is intended to provide researched data about humans, circumstances, or other symptoms, which means to reinforce hypotheses, in order to assist in strengthening theories. old theories or find new theories, based on the provisions of the rule of law and legal principles currently in force. The research carried out by the researcher in this case went through two stages, namely library research and field studies, the data analysis used was juridical qualitative, namely the data obtained were then compiled systematically and thoroughly to get clarity on the problems discussed. The result of this research is the concept of renewing the procedural law for the settlement of industrial relations disputes at the Industrial Relations Court (PHI) which can provide a sense of justice, especially for workers /

laborers as the weaker party in industrial relations disputes. The renewal of the procedural law applicable at the Industrial Relations Court (PHI), is very necessary because of the nature of labor law, which not only has a private element, but also contains a public element, so that in the settlement of industrial relations disputes, government intervention is required, as a form of legal protection. for workers/laborers through statutory regulations.

Key words: *Industrial Relations Disputes, Procedural Law, Legal Reform.*

INTRODUCTION

The development of the business world after slumping due to the economic crisis in 1998 which was followed by a wave of reforms, has had an impact not only in the economic field but also in other fields. One of the areas affected is in the field of employment. In the field of manpower, the term employment relationship is known, namely the relationship between the entrepreneur and the worker/labourer which has elements of orders, work and wages. These three elements are cumulative, which means that there must be 3 of these elements before it can be said to be a working relationship. The settlement of industrial relations disputes was initially the authority of the Labor Dispute Settlement Committee (P4), which has a hierarchy of Regional Labor Dispute Settlement Committees (P4D) located at the provincial level and Central Labor Dispute Settlement Committees (P4P) at the national level. The Labor Dispute Settlement Committee (P4) has the authority based on Law Number 22 of 1957 concerning the Settlement of Labor Disputes, and Law Number 12 of 1964 on Termination of Employment in Private Companies. In general, the P4's authority includes disputes that occur collectively between workers/laborers and employers and disputes regarding layoffs in private companies. In the course of its course, Law Number 22 of 1957 concerning Settlement of Labor Disputes and Law Number 12 of 1964 concerning Termination of Employment in Private Companies, were deemed inadequate and unable to accommodate developing conditions, including: not yet regulating the settlement of disputes between SP/ SB does not recognize individual disputes, does not regulate disputes within SOEs, there is government intervention (Minister veto), the settlement time is quite long, because the decision of the Central Labor Dispute Settlement Committee (P4) can become the object of dispute in the State Administrative Court (PTUN) even to the Supreme Court. (http://thomasibnoesantoso.blogspot.co.id/2014/05/ Hukum-acara-peng Court- Kemerdekaan.html).

The authority of the PHI as regulated in Article 2 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes is to handle disputes concerning rights, interests, termination of employment (PHK), and disputes between trade unions/labor unions in only one company. When referring to the general explanation and Article 123 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, the PHI has broader authority because in addition to being authorized to handle disputes in private companies, PHI also has the

authority to handle industrial relations disputes that occur in privately owned companies. State-owned enterprises (BUMN/BUMD) and foundations, which principally PHI has the authority to resolve 3 (three) types of disputes that occur between employers/entrepreneurs/employers' associations and workers/labor unions/labor unions and 1 (one) type of dispute that occurs between trade unions/labor unions in only one company. In this paper, the researcher will discuss in more depth the problem of procedural law in proceedings at the PHI.

In Article 163 HIR and Article 1865 of the Civil Code stipulates that whoever argues or denies a right, that party is obliged to prove, meaning that the burden of proof is left to the parties as interested parties, so that in this case the judge is passive. This is in accordance with the principles contained in civil procedural law, namely that judges are passive, as well as in proceedings at the IRC, judges only seek formal truth that comes from evidence that can be submitted by the parties in the trial. The concept of the reversed burden of proof in principle is the burden of proof that is not always borne by the party who postulates, due to the fact that in the practice of corruption criminal justice the principle of the reversed burden of proof is known, namely for those who feel they have not done anything wrong, it is the party who is obliged to prove it, which this does not apply in general civil courts and the IRC. In addition to the passive judge, another problem that arises is the obstacle for the parties to submit documentary evidence, especially the original documentary evidence. In an employment relationship, if there is a dispute, not all disputing parties can easily prove what they argue. Problems related to absenteeism and production targets are the domain of the entrepreneur. Meanwhile, problems related to trade unions/labor unions are the domain of the workers. So if one party wants to prove something that is the domain of the other party, it will experience difficulties. Because each party will keep their respective documents and will not use these documents as evidence in court. If the document is deemed unfavorable to the position of the parties in the trial, of course that party will not use it as evidence in court.

Another problem is that in presenting witnesses in court to strengthen the arguments of workers/laborers in fighting for their rights, it is often constrained because the witnesses to be presented are workers/laborers who are still actively working, which, when presented as witnesses, often results in discomfort at work, because considered against the company. In addition, companies often find it difficult or even unwilling to give permission to their workers who will be witnesses in court. Because it is considered to be burdensome / detrimental to the company. As described above, civil procedural law stipulates that judges must be passive, so that in terms of proof, everything is left to the disputing parties. Judges are not given the authority to summon witnesses as applicable in criminal procedural law. The civil procedural law also stipulates that the family's testimony cannot be heard in court, this also makes it difficult for the parties to present witnesses. Although the provisions of Article 145 paragraph (2) of HIR have stipulated that families can be witnesses in the case of an employment agreement, which in this case the researcher understands as an industrial relationship. However, the majority of career judges who are chairmen of the panel at the Courts of Industrial Relations (PHI) always refuse if the witnesses presented have family relations with the disputing parties.

Even though it is possible that only witnesses from the family who dare to be witnesses in disputes that occur between workers/laborers and entrepreneurs, and it is also possible that these witnesses are the only evidence that the disputing parties have in demanding their rights through the courts. Based on the background described above, the researchers will limit the problems as follows:

1. How is the protection of workers/laborers' rights in the settlement of industrial relations disputes at the Industrial Relations Court (PHI) based on the applicable procedural law?
2. What is the concept of procedural law reform that is just in the settlement of industrial relations disputes in the context of developing industrial relations courts in Indonesia?

LITERATURE REVIEW

The fair industrial relations dispute that will be discussed in this chapter is not just a statement, but as a scientific concept built on several theories. The theory used in this research is mapped in the classification of general theory (Grand Theory), Middle Range Theory, and Application theory (Applied Theory) which are related to each other and describe the whole of the theoretical basis built to explain the concept of industrial relations disputes that fair. The general theory used by researchers is the rule of law theory. While the intermediate theory used is the theory of Justice and then the application theory is the theory of Development Law from Mochtar Kusumaatmadja.

1. Industrial Relations in the Indonesian Legal System

1) Rule of Law theory

Plato and Aristotle introduced the rule of law as a state ruled by a just state. In their philosophy, both of them allude to the human imagination which corresponds to the absolute world which is called:

a) The ideal to pursue the truth (idee der warhead);
b) The aspiration to pursue decency (idee der zodelijkheid);
c) The human aspiration to pursue beauty (idee der schonheid);
d) The ideal to pursue justice (idee der gorechtigheid).

Therefore, the rule of law that developed during the Greek philosophy is more accurately described as "the ideal of the rule of law", which was more based on the phenomenon of state life at that time and efforts to find the nature of truth itself.

2) Theory of Justice

The word "justice" has similarities with the Latin "justitia", as well as the French "juge" and "justice". Then in German it is "gerechtigkeit". According to Noah Webster Justice is part of a value or value, because it is abstract so it has many meanings and connotations. In relation to the concept of justice, the word justice is defined as follows:

a) The quality of being righteous; honest (honesty).
b) Impartiality (impartiality); fair representation of the facts.
c) The quality of being right (correct, right).
d) Retribution as revenge (vindictive); reward (reward) or punishment (punishment) according to achievements or mistakes.
e) logical reason (sound reason); truthfulness; validity.
f) The use of power to defend what is right, just or lawful

There is no satisfactory definition of the meaning of justice. Lord Denning, a British Supreme Court Justice once said that “justice is not something that can be seen, justice is eternal and not temporal. How does one know what justice is, even though justice is not the result of reasoning but the product of conscience”?

3) Development Law Theory

Basically, in the history of legal development in Indonesia, one of the legal theories that has attracted a lot of attention from experts and the public is the development law theory put forward by Mochtar Kusumaatmaja. There are several crucial arguments why the development law theory has attracted a lot of attention, which if described globally are as follows: first, development law theory is a legal theory that exists in Indonesia because it was created by Indonesians by looking at the dimensions and culture. Indonesian society. Therefore, by measuring the dimensions of the legal theory of development, it was born, grew and developed in accordance with Indonesian conditions. Second, dimensionally, the theory of development law uses a frame of reference on the way of life of the Indonesian people and nation based on the Pancasila principle which is family in nature, so the norms, principles, institutions and rules contained in the legal theory of development are relatively dimensions that are includes structure (structure), culture (culture) and substance (substance) as said by Lawrence W. Friedman.

Third, basically the legal theory of development provides the basis for the function of law as a means of community renewal (law as a tool of social engineering) and law as a system is indispensable for the Indonesian nation as a developing country. The Law of Development and its elaboration was not intended by the initiators as a theory, but a concept of legal development which was modified and adapted from Roscoe Pound's theory "Law as a tool of social

engineering" which developed in the United States. If further elaborated, the theoretical development law theory from Mochtar Kusumaatmadja is influenced by the way of thinking of Herold D. Laswell and Myres S. Mc Dougal (Policy Approach) plus the legal theory of Roscoe Pound (minus the mechanical conception).

2. Industrial Relations Court in Indonesia

The Republic of Indonesia is a country based on law. Likewise in the explanation of the constitution which explains the system of state government in which it is clearly regulated that Indonesia is a state based on law (rechstaat). From the description of the rule of law concept above, we can see that one of the main elements of the Indonesian rule of law is the existence of an independent judiciary. Sjahran Basah said about the presence of the judiciary as one of the important and also the most dominant elements that refer to law enforcement processes to provide justice and also legal certainty for the community and also the government in order to achieve what is called checks and balances. Thus the position or position of judicial institutions in Indonesia is an integral part of the implementation of the concept of a state of law that aspires to the rule of law and fair law enforcement. An independent judiciary in the constitution of the Republic of Indonesia is formulated with the term "judicial power". Article 24 of the 1945 Constitution states that:

a) Judicial power is an independent power to administer justice to uphold law and justice.

b) Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the military court environment, the State administrative court environment, and by a Constitutional Court.

3. Industrial Relations Disputes in a Just Rule of Law

According to Law no. 13/2003 concerning manpower as amended by Law Number 11 of 2020 concerning Job Creation Article 1 point 16, Industrial Relations is a system of relations formed between actors in the process of producing goods and/or services consisting of elements of entrepreneurs, workers workers, and the government based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. So it can be concluded that industrial relations are relations between all parties who are related or have an interest in the production process or services in a company. The industrial relations must be created in such a way as to be safe, harmonious, harmonious and in line, so that the company can continue to increase its productivity to improve the welfare of all parties concerned or interested in the company. An industrial relation dispute is a difference of opinion that results in a conflict between an entrepreneur or a combination of employers and workers/labor or a trade union/labor union due to a dispute over rights, a dispute over interests, a dispute over termination of employment and a dispute between trade unions/labor unions within the same company (Article 1 number 1 of Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes).

METHOD

The research specification in this study is descriptive-analysis, with a normative juridical approach, namely: research that is intended to provide researched data about humans, circumstances, or other symptoms, which means to reinforce hypotheses, in order to assist in strengthening theories. old theories or find new theories, based on the provisions of the rule of law and legal principles currently in force. The research carried out by the researcher in this case went through two stages, namely library research and field studies, the data analysis used was juridical qualitative, namely the data obtained were then compiled systematically and thoroughly to get clarity on the problems discussed.

RESULT AND DISCUSSION

1. Protection of the rights of workers/laborers in the settlement of industrial relations disputes at the Industrial Relations Court (PHI) based on the applicable procedural law.

If you look at the comparison in the settlement of industrial relations disputes in New Zealand and France, the function of supervision and enforcement of labor laws carried out by the government is very clear, in New Zealand through the Employment Relations Authority, while in France through institutions that called the Labor Inspector, which according to the researcher the function of the two institutions is very similar to the labor inspector in Indonesia. The most striking difference between the Employment Relations Authority in New Zealand and the Labor Inspector in France and the labor inspector in Indonesia is in terms of authority, where in the two countries the function of the labor agency has powers that are not possessed by labor inspectors, including the following: the authority to conduct investigations and ask the parties to bring evidence or witnesses related to alleged violations of labor norms. In addition, the decisions of the labor institutions in the two countries are binding, so that if the parties do not implement the decisions of these institutions, then it is included in the category of criminal acts. Meanwhile in Indonesia, if the parties do not agree or disagree with the decision of the labor inspector on the alleged violation of nomative rights, which in the Regulation of the Minister of Manpower Number 33 of 2016 concerning Procedures for Labor Inspection is called a Supervision Note or an Examination Note, then the parties must make a settlement. disputes through a court mechanism, while the Supervision Note or Inspection Note only serves as evidence when conducting a trial at the Industrial Relations Court (PHI).

Based on the things that have been described above, according to the author, the government should strengthen the function of labor inspectors, so that law enforcement in the field of manpower can be carried out optimally, which in the end is expected to minimize the occurrence of violations of normative rights, which have been regulated in the law. work agreements, company regulations, collective labor agreements and statutory regulations, these are in line with the provisions of Article 2 paragraph (1) of the Regulation of the Minister of

Manpower Number 33 of 2016 concerning Procedures for Labor Inspection stating that labor inspection is a state function in enforcing labor law, because in the opinion of the researcher, the rights that are normative in nature should be given by the entrepreneur to the worker/laborer without having to be asked for it, especially until it has to be disputed through the Industrial Relations Court (PHI).

The government's objective in conducting labor inspection is to ensure the implementation of labor norms in the company or workplace. Meanwhile, the function of labor inspection itself is to guarantee the enforcement of labor law, to provide information and technical advice to entrepreneurs and workers/laborers on matters that can ensure the effectiveness of the implementation of labor laws and regulations and to collect information on employment relations and labor conditions in the broadest sense. -the breadth of which is used as material for the preparation or improvement of labor laws and regulations.

The author believes, if the government's function in conducting labor inspection is carried out effectively and maximally, then the fulfillment of the normative rights of workers/labourers can be carried out without having to go through a dispute mechanism, so that this will encourage workers/labourers to improve their work productivity for the better. as well as reducing the potential for disputes between workers/laborers and entrepreneurs as a result of violations of normative rights committed by employers, which in the end is expected between workers/laborers and employers to create harmonious, dynamic and fair industrial relations.

2. Concept of Renewal of Fair Procedural Law in the Settlement of Industrial Relations Disputes in the Framework of Developing Industrial Relations Courts in Indonesia

Based on the urgency and purpose of reforming the procedural law of the Industrial Relations Court, the researcher will describe several things that will form part of the framework for the renewal of the procedural law of the Industrial Relations Court as follows: First, the legal reform must be based on the understanding that the Industrial Relations Court was formed as a efforts to resolve disputes that occur within the scope of industrial relations. Settlement of industrial relations disputes does not only question private interests involving two parties, namely the worker/laborer and the entrepreneur/employer. Settlement of industrial relations disputes is part of labor law/manpower law. Employment law in Indonesia is not purely private, but there is also a public nature in it. It is private because it regulates the relationship between individuals (employer-labor) in making work agreements and public because the government intervenes in labor issues and there are criminal sanctions in labor law regulations. The relationship between public law and private law is the relationship between special law or exception to general law.

Second, that industrial relations disputes consist of normative and non-normative disputes. Normative disputes are disputes over matters that have a legal basis or regulation. While non-normative disputes are matters that are not or have not been regulated in laws and regulations,

company regulations, collective work agreements or work agreements. Regarding normative disputes, it should be sufficient to resolve them in the context of labor inspection only, namely the activities of monitoring and enforcing the implementation of laws and regulations in the manpower sector by the Government, as the researcher explained in the previous explanation. In other words, this labor inspection is a form of state intervention to carry out its functions in the context of enforcing labor law. Labor inspection has adequate instruments to resolve normative disputes because apart from being able to do it by means of preventive education, it can also be done by means of non-judicial repressive and judicial repression. Non-judicial repression, which is a forced effort outside the court institution to fulfill the provisions of the labor legislation in the form of an Audit Note as a warning to employers to be willing to implement the norms that have been regulated by laws and regulations in the field of manpower based on the results of the examination and/or or testing conducted by labor inspectors. Meanwhile, judicial repression is a coercive effort through a court institution by conducting an investigation process by the Labor Inspector as the Employment PPNS.

Third, the settlement of industrial relations disputes as far as possible can be resolved through a non-litigation mechanism through a tripartite mechanism (mediation, conciliation or arbitration) for normative disputes. With a note that the mechanism through the tripartite settlement time does not exceed the time stipulated in the legislation. If the disputing parties cannot accept the outcome of the bipartite negotiations, the mechanism adopted by the disputing parties is to request an examination through the labor inspector, and not to file a lawsuit with the Industrial Relations Court. Except for matters of a non-normative nature, the settlement is through the mechanism of filing a lawsuit to the Industrial Relations Court (PHI), with a note that to speed up the dispute resolution process, mediation is no longer carried out by the Mediator of the Manpower Service, but mediation is carried out directly by judges at the Ministry of Manpower. Industrial Relations Court.

The three things mentioned above can be used as the basis for the development of a model framework for reforming the procedural law of the Industrial Relations Court. Furthermore, the elements that are part of the model framework will be discussed which in this case the researcher will call the "Main Elements". This main element is the adjustment of the principles of civil procedural law, namely by making changes to the principles containing elements of liberalism which emphasize the autonomy of the parties (partijautonomie), especially the principle of passive judges (lijdelijkheid rechten). This change in principle is in line with the opinion of the researcher as mentioned earlier, namely in an effort to reform the law, both material law and formal law, the point of departure must be from the formulation of legal principles (rechtsbeginselen) first. In changing the old principles to new principles, it is necessary to pay attention to what was expressed by Mochtar Kusumaatmadja, prioritizing principles that are generally accepted by nations without leaving the original legal principles or customary law that are still valid and relevant to modern world life. It is also necessary to maintain the principles which are a reflection of the determination and aspirations as a nation

that achieves its independence through struggle. Such principles and concepts are contained in the 1945 Constitution of the Republic of Indonesia and its Preamble which is a reflection of the Pancasila philosophy.

The researcher believes that the passive judge principle (lijdelijkheid rechten) really needs to be changed. This is because in the Netherlands itself, the principle of passive judges (lijdelijkheid rechten) has long been abandoned. Many aspects of lijdelijkheid that prevailed in the nineteenth century no longer appear to be part of Dutch civil procedure. According to a recent report on the Dutch civil justice system, the autonomy of the parties is currently limited to the responsibility of the parties to decide the subject matter of their controversy. In addition, the latest developments from the reforms of civil procedural law that occurred in continental European countries, especially the Netherlands, where the renewal of the Dutch civil procedural law introduced in 2002 already contains five basic principles as follows:

a) simplify civil procedural law;
b) get rid of some formalities;
c) modernizing the relationship between the court and the parties (and vice versa);
d) efficiency; and
e) align procedural law

The reform of Austria's civil procedural code also needs to be observed in connection with Austria's civil procedural code, which was the first to successfully break France's liberal procedural tradition with passive judges and extended party autonomy. Austrian Civil Procedure Law views that civil procedural law from the perspective of the function meets the needs of the wider community (ie the so-called Sozialfunktion of civil litigation) and not only from the perspective of each party.

CONCLUSION

1. That if the entrepreneur violates the normative rights of workers/laborers that have been regulated in the work agreement (PK), company regulations (PP), collective work agreement (PKB) or laws and regulations, then the settlement is carried out by means of a settlement mechanism for industrial relations disputes through the Court. Industrial Relations (PHI), then this will result in legal uncertainty regarding normative rights that should be the employer's obligation to give them to workers/laborers without having to be asked, let alone to be sued through a dispute mechanism at the Industrial Relations Court (PHI). This is due to the weakness of the supervisory function in the labor sector.

2. Whereas the different interpretations, meanings and implementations of civil procedural law in the settlement of industrial relations disputes at the judex facti level cannot be separated from the dualism of the procedural law that applies at the Industrial Relations Court (PHI), namely civil procedural law which is still based on statutory regulations. -

Invitations inherited from the Dutch East Indies Government include Reglement op de Rechtsvordering (RV), Het Herziene Indonesisch Reglement (HIR) and Rechtsreglement Buitengewest (RBg) as well as Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. The procedural law applicable at the Industrial Relations Court (PHI) is no longer in accordance with the developments and needs of today's society, moreover the material law in the field of manpower has undergone several changes. Apart from that, there are private and public aspects contained in Law Number 13 of 2003 concerning Manpower which has been amended through Law Number 11 of 2020 concerning Job Creation as material law in industrial relations which is out of sync with formal law in the field of industrial relations. employment which only contains a purely private aspect. The pure private aspect contained in the formal law is one of the factors that causes workers/labor as a party whose position is weaker, will have difficulty defending their rights, if through a dispute mechanism using the procedural law currently applicable at the Industrial Relations Court (PHI).

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