MECHANISM FOR TRANSFERRING THE RESOLUTION OF INDUSTRIAL RELATIONS DISPUTES THROUGH MEDIATION FROM THE NORTH LOMBOK REGENCY LABOR OFFICE TO THE WEST NUSA TENGGARA PROVINCIAL LABOR OFFICE

Rahmawati Kusuma[1*], H. Zaeni Asyhadie[2]
[1,2]Faculty of Law, Social, and Political Science, University of Mataram, Indonesia
rahmawatikusuma@unram.ac.id[1*], zaeniasyhadie@unram.ac.id[2]

Abstract

This study aims to understand about the mechanism for transferring the resolution of disputes through mediation from the North Lombok Regency Labor Office to the West Nusa Tenggara Provincial Labor Office. The issues addressed in this study are why dispute resolution through mediation must be transferred to the NTB Provincial Labor Office and how the transfer mechanism works. The research method used in this study is Normative-Empirical Legal Research, which combines normative legal elements with additional empirical data. The findings of the research indicate that the main factor leading to the transfer of industrial relations disputes from the regency to the province is the absence of a mediator in North Lombok Regency. As a result, the parties involved can be referred to the provincial government, which has mediators. There is no specific mechanism for the transfer of such cases; the labor office merely sends a request letter to assign a mediator to handle the industrial relations issues through mediation. It is hoped that the central government can appoint or assign a mediator to be placed in the region to avoid the need for case transfers from the regency to the province, thereby minimizing the time required to resolve ongoing industrial relations disputes.

Keywords: Transfer Mechanism; Industrial Relations Disputes; Mediation; Mediator

INTRODUCTION

As a state governed by law, Indonesia ensures that it's citizens receive justice in accordance with the prevailing laws through the judicial power exercised by the courts.

In Law Number 13 of 2003 concerning Manpower, the term "manpower" is defined as everything related to workers before, during, and after their period of employment.

The term "manpower" comes from the root word "tenaga kerja" (labor), with the addition of the prefix "ke-" and the suffix "-an". Therefore, "ketenagakerjaan" refers to matters related to labor.

In general, "labor" is defined as "any person who is capable of working, except:

a. Children under the age of 14 years old;
b. The Persons who are still in full-time education;
c. The Persons who, for certain reasons, are unable to work.

The legal position between workers or laborers and employers in an employment relationship is said to be equal. However, empirically, this legal fact is difficult to find. In employment relationships, the employer is often "perceived" to have a higher position than the workers or laborers, which frequently leads to inequality and misunderstandings.

It is well known that every employment relationship in industrial development always creates different dynamics between employers and workers/laborers, which, in turn, affects the social fabric of society. The control over industrial enterprises cannot simply be equated with the old concept of human control over goods and various other changes in societal organization. Thus, the social impact of industrial development can lead to significant disparities in the field of labor, such as the exploitation of workers, poor workplace health conditions, and extremely low wages that fall far below the minimum living needs, among other issues. Humans play a crucial role in the production process, and regardless of how minor that role might be, it must be protected because the human element is the central point of any development concept and strategy. Therefore, workers/laborers need legal protection that promotes equality between the parties involved in the employment relationship.

Labor disputes, commonly referred to as Industrial Relations Disputes (PHI) in Indonesia, must first go through a mandatory mediation process at the local Manpower Office (Disnaker) of the district or city where the company/employer is located, before proceeding to court. This process involves the assistance of an Industrial Relations Mediator.

According to Law No. 13 of 2003 in conjunction with Law No. 2 of 2004, there are four types of Industrial Relations Disputes:

1. Disputes over Rights: These disputes arise from the failure to fulfill rights due to differing implementations or interpretations of legal provisions, employment agreements, company regulations, or collective labor agreements.
2. Disputes over Interests: These disputes emerge in employment relationships due to disagreements over the creation or modification of working conditions stipulated in employment agreements, company regulations, or collective labor agreements.
3. Disputes over Termination of Employment: These disputes occur when there is a disagreement regarding the termination of employment initiated by either party.
4. Disputes between Labor Unions within a Single Company**: These are conflicts between different labor unions within the same company, arising from differing opinions regarding membership, the exercise of rights, and obligations of union membership.

Every dispute, regardless of its type or nature, requires resolution efforts. The resolution mechanisms or processes outlined in Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes include several methods, one of which is mediation through a mediator at the local manpower office. If mediation fails, the dispute may then proceed to the Industrial Relations Court.

Mediation is one of many Alternative Dispute Resolution (ADR) methods, initially developed in the United States. It is viewed as a form of out-of-court dispute resolution (non-litigation), although it can also take the form of court mediation. Mediation arose due to the slow process of dispute resolution in courts and serves as a response to growing dissatisfaction with the judicial system, particularly regarding time, cost, and its ability to handle complex cases. Historically, in Indonesia, dispute resolution through deliberation has long been practiced, and in a legal context, this is referred to as mediation. In pursuing their livelihood, individuals generally face various rights and obligations. The demand for rights becomes more pronounced when fulfillment is directly related to basic needs such as clothing, food, shelter, and land.

In the Employment Law, there is no procedure or mechanism that regulates the transfer of dispute resolution from the district labor office to the provincial labor office. Each labor office should have one or more mediators to assist with industrial relations disputes. Therefore, it is the responsibility of the provincial labor office to take over the resolution of these industrial relations disputes.

Industrial relations in Indonesia, according to Abdul Khakim, differ from those in other countries. The characteristics are as follows:

a. Recognizing and believing that work is not merely a means of earning a living but a dedication of humans to their God, fellow humans, society, the nation, and the state.
b. Considering workers not as factors of production but as dignified human beings.
c. Viewing the relationship between employers and workers not in terms of conflicting interests but as having a common interest in the advancement of the company.

The principle of industrial relations applied in Indonesia is the Pancasila industrial relations principle. This principle requires that various issues or disputes in the field of employment must be resolved through the Pancasila industrial relations principle.

In 2023, previous research was conducted with the title "Settlement of Disputes Through Mediation in the Outsourcing Labor Distribution in the Gili Tramena Area." However, at that time, the Head of the Department of Manpower (Disnaker) stated that there were no mediators available to mediate between the parties. According to Kadarusna, SH., the North Lombok Disnaker was only able to implement mediation settlements starting early in 2023. However, they were unable to provide data for 2023 as data collection is typically completed at the end of the year before the new year begins. Based on the conclusions drawn from the previous research, the researcher will focus on the title "Mechanism for the Transfer of Mediation Dispute Resolution from the North Lombok District Manpower Office to the West Nusa Tenggara Provincial Manpower Office." The issues to be discussed in this study are the factors influencing the transfer of authority for Industrial Relations disputes through mediation from the North Lombok Disnaker to the West Nusa Tenggara Provincial Disnaker and the mechanism for this transfer of mediation dispute resolution.

RESEARCH METHODS

The type of research conducted in this study is Normative Empirical Legal Research, which is a type of legal research that analyzes and examines how the law operates in society. Empirical Legal Research examines the law as a norm within legislation and analyzes the effectiveness of its application in social life. It studies the principles of law applied as rules or norms that guide appropriate human behavior, by examining the applicable legal provisions.

DISCUSSION

Factors influencing the delegation of authority for Industrial Relations Dispute resolution through Mediation from the KLU Regency Manpower Office to the NTB Provincial Manpower Office

Dispute resolution can be carried out through litigation or non-litigation processes. Dispute resolution through litigation is a dispute resolution process through the courts. While non-litigation resolution is a dispute resolution process carried out outside the courts or is often referred to as alternative dispute resolution, or in English it is called Alternative Dispute Resolution (ADR).

The process of resolving conflicts through the courts often causes problems considering the relatively large costs at each level of justice, draining time, thought and energy, not to mention the prolonged psychological conflict between the parties involved in the dispute. In order to anticipate problems with the courts, a non-court settlement method emerged.

ADR has its own appeal in Indonesia, there are several advantages that often arise in ADR, namely:

1. The voluntary nature of the process

   The parties believe that ADR provides a potential way out to resolve problems better when compared to litigation procedures and other procedures involving third-party decision makers. In general, no one is forced to use ADR procedures.
2. Fast procedure.

   Because the ADR procedure is informal, the parties involved are able to negotiate the terms of its use. This prevents delays and speeds up the resolution process.
3. Non-judicial decision.

   The authority to make a decision remains with the parties involved or is not delegated to a third-party decision maker. This means that the parties involved have more control over the outcome of the dispute and are able to predict.
4. Control over organizational needs.

   ADR procedures place the decision in the hands of someone who has certain potential (important), both to interpret the long-term and short-term goals of the organizations involved and to interpret the positive and negative impacts of each particular problem-solving option. A third party in the decision-making process that binds an issue often asks for the help of a judge, jury, or arbitrator.
5. Confidential procedures

   ADR procedures provide certainty of confidentiality for the parties in equal portions. The parties can explore potential dispute options and their rights to present data to counterattack are protected.
6. Flexible in designing the terms of the problem resolution

   ADR procedures provide greater flexibility for the parameters of the issues being discussed and the scope of the problem resolution. In addition, it allows the development of a more comprehensive settlement method to discuss the causes of the dispute. The procedure can avoid the constraints of official procedures that have been followed or not.
7. Save time

   So far, the problem solving process has often experienced significant delays in waiting for certainty of the trial date. The ADR procedure offers a faster agreement to resolve disputes without having to spend years on litigation. In many cases, time is money and delays in resolving problems require very expensive costs, dispute resolution developed through the use of ADR procedures is an appropriate alternative problem solving.
8. Cost Savings

   The amount of cost is usually determined by the length of time used. Neutral third parties generally charge lower rates to replace their time than they would if they were paying legal counsel.

9. Relationship maintenance.

   ADR produces negotiated agreements that take into account the needs of the parties involved. In other words, ADR is able to pay attention to ongoing and future working relationships.

10. High possibility of implementing the agreement.

    In ADR, the parties who have reached an agreement tend to fulfill the terms or contents of the agreement that have been determined by the decision maker (third party). This factor helps the parties involved to avoid ineffective litigation.

11. Control and easier to predict results.

    Parties who negotiate their own dispute resolution have more ways to resolve it through negotiation or mediation and are more likely to estimate the advantages or disadvantages than if the case goes through arbitration before a judge.

12. Decisions last forever.

    Dispute resolution decisions with ADR procedures tend to last forever. If the dispute later causes problems, the parties involved utilize cooperative forms of problem solving rather than adopting an adversarial or conflictual approach.

There are several ways to resolve non-litigation disputes, one of which is through Mediation. Mediation is a way to resolve disputes through a negotiation process to obtain an agreement between the parties assisted by a Mediator. A Mediator in a Government agency is a neutral party who assists the parties in the negotiation process to find various possibilities for resolving disputes without using the method of deciding or forcing a settlement. In 2023, it was discovered that the North Lombok Regency Manpower Office did not yet have a Mediator, this was the main factor in the delegation of the resolution of Industrial Relations Disputes through Mediation from the Regency Government to the Provincial Government. To resolve industrial relations disputes through Mediation, the KLU Manpower Office (Disnaker) delegated the resolution of problems through mediation to the NTB Provincial Manpower and Transmigration Office to assist in obtaining a Mediator to resolve problems through Mediation. Quoted in Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes Article 4 paragraph (1) states that when bipartite negotiations fail, one or both parties must record their dispute with the local agency responsible for labor affairs by attaching evidence that efforts to resolve it through bipartite negotiations have been made. Then in paragraph (3) it states that if after receiving the recording from one or both parties, the local agency is required to offer the parties to agree to choose a settlement through conciliation or arbitration. Then paragraph (4) states that if the parties do not determine the choice of settlement through conciliation or arbitration within 7 (seven) working days, then the agency responsible for labor affairs delegates the settlement of the dispute to a mediator through mediation.

Actually, the article explains that in the settlement of industrial relations disputes after the bipartite style, the parties only have two settlement options, namely through conciliation or arbitration, while mediation is not offered. The parties are only offered two settlement options, if they do not determine the choice of either conciliation or arbitration, then the Agency responsible for the employment sector will delegate the dispute to the mediator at the Agency responsible for the employment sector including determining the mediator. Delegation of the dispute to the mediator and determining who the mediator is without first asking for the consent of the disputing parties. Industrial relations mediation should be based on the voluntary principle that each disputing party comes to the Mediator to conduct Mediation of their own wishes and will voluntarily and there is no coercion and pressure from other parties or external parties. Dispute resolution through mediation does not involve any element of coercion between the parties and the mediator, the parties voluntarily ask the mediator to help resolve the conflict that occurs.

In PERMA NO.1 YEAR 2016, it is stated that there are several types of cases that can be resolved through mediation, including:

1. All civil disputes submitted to the Court, including cases of resistance (verzet) to default decisions and resistance by the litigants (partij verzet) or third parties (derden verzet) to the implementation of decisions that have permanent legal force, must first be resolved through Mediation, unless otherwise determined based on this Supreme Court Regulation.
2. Disputes that are exempt from the obligation to resolve through Mediation as referred to in paragraph (1) include:
   a. Disputes for which the trial hearing has a deadline for resolution, including:
   1. Disputes resolved through Commercial Court procedures
   2. Disputes resolved through Industrial Relations Court procedures;
   3. Objections to decisions of the Business Competition Supervisory Commission;
   4. Applications for cancellation of arbitration decisions;
   5. Objections to decisions of the Information Commission;
   6. Settlement of political party disputes;
   7. Objections to the decision of the Consumer Dispute Resolution Agency;
   b. Disputes whose examination is conducted without the presence of the plaintiff or defendant who has been properly summoned;
   c. Counterclaims (reconvention) and the entry of a third party into a case (intervention);
   d. Disputes regarding the prevention, rejection, cancellation and ratification of marriage;
   e. Disputes submitted to the Court after an attempt to resolve the matter outside the Court through Mediation with the assistance of a certified Mediator registered with the local Court but declared unsuccessful based on a statement signed by the Parties and the certified Mediator.

Mekanisme pelimpahan penyelesaian sengketa Hubungan Industrial secara mediasi dari Dinas Ketenagakerjaan Kabupaten KLU ke Dinas Ketenagakerjaan Provinsi NTB

Industrial relations disputes are closely related to the interests between workers and business owners or employers, so they can often be the cause of differences of opinion, even disputes between the parties involved. There are several factors that can cause problems or disputes in labor between workers and employers, namely the termination of employment relationships, or the non-fulfillment of workers' rights. However, industrial relations disputes can also occur between workers and other workers, for example disputes between labor unions or labor unions with each other in a company regarding dual membership.

There are several types of industrial relations disputes in Article 2 of the industrial relations legislation explains, several types of industrial relations, including:

1. Rights Dispute

   It can be explained that in the dispute, the dispute that arises is caused by the unfulfilled desires, as a result of the implementation or meaning of interpreting the provisions of the law, work agreement, company regulations or cooperation agreement. For example;

   1. The regulations that have been made by the company, the Joint Work Agreement or PKB and the work agreement;
   2. There is an agreement that is not fulfilled; and
   3. There are prescriptive provisions that are not implemented.

2. Dispute of Interest

It can be explained that the dispute that arises during the employment relationship as a result of differences of opinion regarding the determination and/or changes in working conditions as used at the time of the employment contract, Worker Agreement, or Joint Work Agreement. For example: increased pay, shipping costs, meal costs, risk transfer and others.

3. Dispute of Termination of Employment

   It can be explained that the dispute arises due to a dispute over termination of employment due to one of the parties. For example; there is a discrepancy regarding the reasons for Termination of Employment and different ways of calculating severance pay.

4. Disputes between unions involving only one company.

   It can be explained that there is a dispute between a union and another union and is still within the scope of one company, which has a cause of differences in understanding union membership, implementation of rights and obligations.

Every time a dispute occurs there will always be a way out, namely making peace, before peace is made, of course, fellow humans resolve it through mediation. One expert, Takdir Rahmadi, once said that mediation is a process of resolving a dispute between several parties or more by negotiating or reaching a consensus through the assistance of a third party who does not have the authority to decide.

Theoretically, every legal norm must not conflict with a higher legal norm, because every higher legal norm is the source of a lower legal norm. This means that every legal norm of equal status is formed based on a higher legal norm and must not conflict with each other because it is formed based on the same norm. Law Number 8 of 1999, Law Number 30 of 1999 and Law Number 2 of 2004 are legal norms of equal status that are formed based on the 1945 Constitution of the Republic of Indonesia, therefore they must not conflict with each other.

Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (PPHI) is a special law, specifically regulating the issue of resolving industrial relations disputes. Because it is special, its norms are slightly different or even contradictory to previous laws of equal status. However, based on the principle of lex specialis derogate legi generalis, Law Number 2 of 2004 concerning PPHI as a special legal regulation will override general legal regulations such as the laws mentioned above. However, the voluntary principle is not only a principle that only exists in the laws in force in Indonesia, but is a principle that applies generally in the implementation of mediation anywhere.

Therefore, mediation in resolving industrial relations disputes must be the result of a voluntary choice of the disputing parties, not the choice of the agency responsible for the field of employment. To carry out Mediation in resolving industrial relations, a Mediator is needed in the field of Employment. Mediators are usually presented by government agencies and appointed as Mediators. However, not all government agencies have a Mediator, especially in North Lombok Regency which in 2023 did not have a Mediator to resolve Industrial Relations disputes, so cases that require a Mediator are transferred to the Manpower and Transmigration Office of the West Nusa Tenggara Provincial Government.

According to Mr. Samsudduha as the Mediator of the NTB Provincial Manpower and Transmigration Office, for cases that require a Mediator and do not yet have a Mediator, the case being handled can be delegated to the NTB Provincial Government to be handled and given a Mediator. There is no special mechanism that must be taken by the disputing parties to obtain a Mediator, it only requires a Letter of Application requesting a Mediator for the settlement of industrial relations disputes through Mediation from an Agency in the field of employment that does not have a Mediator to the NTB Provincial Manpower Office. The KLU Manpower Office sends a Letter of Application to the NTB Provincial Manpower Office to be able to appoint a Mediator to help handle Industrial Relations Disputes through Mediation, then

after that the Provincial Government will send a Reply Letter to the KLU Manpower Office and approve the delegation of handling of the case. The NTB Provincial Manpower Office will not notify the disputing parties regarding the identity of the Mediator, because the appointment of the Mediator will be made directly when the parties are at the location where the Mediation takes place.

The implementation of mediation to resolve disputes is in principle based on the willingness of the parties. The choice of mediation is a free will based on the agreement of the parties who want to resolve the dispute through mediation. The choice of the parties to undergo mediation is not based on an order or obligation of law. This means whether the dispute is resolved through mediation or not depends on the free will of the disputing parties. However, mediation for the settlement of industrial relations disputes is carried out based on Law Number 2 of 2004 concerning PPHI Article 3 paragraph (1) Industrial relations disputes must be resolved first through bipartite negotiations through deliberation to reach a consensus. Furthermore, Article 4 paragraph (1) to paragraph (4), if the bipartite fails to reach an agreement, the dispute is recorded at the Agency responsible for the field of employment, then it is mandatory to offer the parties to choose a settlement through conciliation or arbitration. The mediator in Industrial Relations Disputes plays a very active role because the success or failure of a mediation is determined by the role of the mediator, the mediator also has a very crucial position in resolving disputes, because the mediator in resolving this dispute must have the following roles:

1. holding meetings between the disputing parties,
2. leading the discussion, that in the meeting held by the parties there must be a discussion and the discussion is of course led by a mediator.
3. saving and maintaining existing regulations so that during the negotiations it can run well, in carrying out mediation a mediator reads out important things that are allowed and not allowed in mediation which aims for negotiations to be carried out properly and there is no violence and discomfort in the room.
4. controlling the emotions of the parties, which aims for mediation to be carried out wisely and problems can be resolved quickly and accurately.
5. Encouraging parties who do not have the courage or are afraid to express their point of view.

In mediation, several processes are carried out that must be known by the disputants, namely there are 3 (three) methods, including:

1. The first pre-mediation process, namely the parties filing a lawsuit as plaintiffs and registering their case with the court and on the day the panel of judges through mediation tries to reconcile the disputing parties through mediation and the disputants can freely determine the mediator who must have a certificate as a mediator, usually the panel of judges gives only 1 (one) day to choose, if 1 day is not found then the panel of judges determines the mediator.
2. Mediation Next, the mediator has been determined by the disputing parties, then the disputing parties must fulfill the important documents needed to resolve the dispute to the mediator, at that time the mediator is obliged to determine the time of implementation between the two parties to resolve the problem, the summons of expert witnesses is not immediately summoned but must be approved in advance by the parties, the costs arising from the summons of expert witnesses are borne by the disputing parties on the basis of previous agreements, a Mediator must be able to dig up information from the parties for the benefit of each party that has a dispute to find the best way to resolve it if it is needed, the meeting held by the mediator with one of the related parties of course a mediator is obliged to fulfill the wishes of the parties

and this can be done so that the mediator receives an explanation in as much detail as possible.

3. The final process of mediation can be carried out no later than 40 working days and can be extended for a maximum of 14 working days if the dispute has not been resolved, but if the mediation results in an agreement, the parties concerned must plan in writing when the agreement is reached and resolved and signed by each party to the dispute and the judge also ensures it as a form of peace agreement and if no agreement is reached, the judge must then examine the case in accordance with the existing and applicable Procedural Law regulations.

A Mediator has an important role in the process of resolving Industrial Relations Disputes through mediation, namely by fostering industrial relations, improving industrial relations, and also being able to resolve disputes that occur outside the industrial relations court.

CONCLUSION

The main factor causing the transfer of Industrial Relations Dispute resolution through Mediation from the Regency Government to the Provincial Government is the unavailability of a Mediator in the government agency, especially in the field of employment. Because the resolution of industrial relations disputes through mediation can be done when a Mediator is present, this has been regulated in the Industrial Relations Dispute Law.

Then for cases that require a Mediator and do not yet have a Mediator, the case can be transferred from the district government that does not yet have a Mediator to the Provincial Government by making a letter of Application for the transfer of industrial relations cases through Medias. This has also been expressed by a Mediator from the NTB Provincial Manpower Office.

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