

Strengthening the Role of Mediators in Settlement of Industrial Relations Disputes During the Pandemic

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Strengthening the Role of Mediators in Settlement of Industrial Relations Disputes During the Pandemic

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ABSTRACT

The COVID-19 pandemic has resulted in many employers terminating their workers, which has led to an increase in cases of industrial relations disputes. Mediation is one method of settling industrial relations disputes. The purpose of this study is to determine the role of the mediator in the mediation process, and efforts to strengthen this role to maximize the occurrence of fair industrial relations dispute settlement process. The research method used is normative. The study results show that the mediator's role is still considered a mere arbiter, with recommendations that the parties can easily ignore. Therefore, the mediator should be given a strengthening role in the mediation dispute resolution process. Strengthening can be done through 1. Efforts to increase literacy regarding industrial relations and settlement of industrial relations disputes, to obtain appropriate recommendations; 2) Mediators have the primary function of reconciling the two parties, so it is necessary to make special regulations regarding the profession of the mediator to continuously improve skills through direct training to mediators who have reconciled many parties to the dispute; 3) There must be a positive law that contains the obligations of the disputing parties to come to the mediation event.

Keywords: Mediator, Termination of Employment, COVID-19, Law

1. INTRODUCTION

The current covid-19 pandemic has become a global problem [1] which has various impacts on the lives of the world's people, including in Indonesia [2]. Conditions are getting worse with efforts to handle COVID-19 which are considered not optimal enough. The increasing number of cases every day makes people feel restless in dealing with life problems, especially in economic issues. Various measures to overcome the Covid-19 have been tried to break the chain of the spread of Covid-19. In several policies that the Government has issued, for example, limiting the distance between interactions with other people (Social Distancing), Work from home [3]. The imposition of restrictions on Community Activities in Indonesia (PPKM) like this is, in fact, the most counterproductive regulation. On the one hand, this policy was intended to control the massive spread of Covid 19. However, on the other hand, it gave rise to new problems, especially in the field of industrial relations in the form of 1) Cutting wages for workers [4]; 2) termination of employment [5]; 2) Unequal social security is owned by workers and families [6]. [6]

The Ministry of Manpower said that the impact of the COVID-19 Pandemic caused more complex

employment development challenges [7] based on research from the Indonesian Institute of Sciences (LPI) together with the Manpower Research and Development Agency of the Ministry of Manpower and the Demography Institute of the Faculty of Economics and Business, University of Indonesia conducted an online survey on the impact of the emergency. The coronavirus on workers in Indonesia. In addition to the health sector, the COVID-19 pandemic has also greatly affected the economic sector, including the world of employment in Indonesia. According to data from the Ministry of Manpower, as of April 20, 2020, as many as 2,084,539 workers from 116,370 [8] companies were laid off and affected by layoffs [9].

This discrepancy between the entrepreneur and the worker/laborer is the basis for the occurrence of an industrial relations dispute. [10] Even though industrial relations disputes between workers and employers can be resolved by the provisions on the settlement of industrial relations disputes as regulated in Law Number 2 of 2004. Industrial relations disputes between employers or a combination of employers and workers/laborers need to be suppressed as much as

possible in the hope of reducing the impact of conflicts that can harm various parties. 12

Mediation is one method that can be used by the disputing parties to resolve industrial relations disputes between the two parties. Mediation is often an option based on [11]: 1) a fast procedure; 2) confidentiality of disputes can be maintained; 3) win-win solution method obtained by the disputing parties. However, there are several weaknesses in the mediation method in settlement of industrial relations disputes, namely: 1) The agreement obtained does not have coercive power unless it is registered with the industrial relations court so that execution can be requested; 2) The results of the mediation are still underestimated because they are not as strong as the court's decision;

However, these shortcomings do not necessarily cause the mediation method to be adopted. Efforts should be made to strengthen the mediator to produce a mutual agreement that is a win-win solution. Maximizing mediation can also reduce the burden of cases that go to industrial relations courts. Therefore, this study focuses on efforts to strengthen the mediator as the party conducting the mediation,

2. METHOD

Method used in this study is the normative juridical research method [12]. The nature of the research in this paper is descriptive research. The data used is secondary data obtained from the literature study.

3. DISCUSSION

The Role of the Labor Service Mediator in Resolving Disputes for Layoffs During the Covid-19 Pandemic

Industrial relations disputes can be a crucial problem if they are not handled properly and professionally. Therefore, the role of a third party as a mediator in a conflict of international relations is needed. In this case, a mediator in industrial relations has a strategic role in fostering industrial relations and resolving industrial relations disputes. The party who becomes the mediator should have the expertise, ability and is required to master the regulations in the field of the workforce. When viewed from one of the obligations that must be owned by the mediator, namely playing a role in providing written recommendations to the parties. From the written recommendation, it can be forwarded to the parties for approval and rejection. With this, we know that the nature of this written recommendation is not binding on the parties. However, a written recommendation can be binding if both parties have agreed and are willing to be included in a collective agreement.

The role of the mediator is to mediate in a dispute over layoffs that occur between workers or trade unions and employers [13]. The next role of the mediator, namely the mediator, can be seen as a conciliatory party

for the disputing parties. This can be known from receiving a notification from one of the parties or the disputing parties. In settlement of industrial relations disputes, if there are problems that are difficult to resolve, the mediator must act [13]:

- a. Open and insoluble to one of the parties;
- b. Can break away from the parties' wishes and then try to become a solver or solution provider;
- c. Encouraging the problem solver process and preventing the development of a continuous bargaining process between the parties.

The mediator is also required to be good at seeing the situation and condition of the disputing parties.[13] This is the principal capital for a mediator to control the mediation trial. However, the parties continue to strengthen their defense for their actions. In this situation, the mediator is required to be able to reconcile the problem with the applicable laws and regulations related to the issue of layoffs or other disputes. At the same time, the mediator will be faced with the formulation of problem-solving, which will later be offered to the parties as an alternative solution to the parties' problems. 4

The mediator is required to create conducive conditions to ensure the creation of a compromise between the disputing parties. So that the disputing parties can obtain mutually beneficial results. The critical role of the mediator in the mediation session is to be able to protect the disputing parties to be comfortable and be able to mediate properly. Because the mediator functions to chain and reconcile the disputing parties.

During the COVID-19 Pandemic, the number of disputes over the termination of employment continues to increase. According to the Ministry of Manpower, in cases of industrial relations during the COVID-19 Pandemic, around 29.4 million workers/laborers affected by the COVID-19 Pandemic were laid off until they were laid off, recorded on March 27, 2021.[14] Many companies are threatened with bankruptcy due to the impact of the COVID-19 Pandemic as it is today. Most of these companies prefer to reduce the number of workers to cover the company is experiencing. Many of the workers/laborers were dismissed unilaterally or not by the mutually agreed work contract. Whereas the agreed contract should be a binding rule for the parties.[15] Therefore, the role of a mediator in industrial relations disputes is significant.

Efforts to Strengthen the Role of Mediators in Settlement of Industrial Relations Disputes during the Pandemic

The number of cases of termination of employment and disputes over rights in the era of the COVID-19 Pandemic has an impact on increasing the number of cases of industrial relations disputes in industrial relations courts. The existence of an industrial relations court is only in the provincial capital.

Therefore, efforts must be made to maximize the non-litigation process for resolving industrial relations disputes. Especially considering that mediation can resolve all industrial relations disputes, as stated in Article 1 point (11) of Law No. 2/2004. Maximization of mediation is done by strengthening the role of the mediator in the mediation process. *First*, efforts to increase knowledge. Not limited to legal knowledge, but for non-law such as social science and economics. This is important so that the mediator can provide a solution that is good and fair for both parties to the dispute.

Second, increasing skill in mediation. If the reinforcement in the first point is cognitive, then the support in the second point is affective and psychomotor. A mediator is not only required to have high knowledge but the ability to resolve disputes. Even though it is neutral, it does not mean that the mediator is sitting still. The mediator must be skilled in bringing the agreement between the two parties together. Therefore, mediators should be given training [16] with trainers of mediators who successfully reconcile many disputants.

Third, it is undeniable that the failure of mediation often occurs because the parties are reluctant to attend the mediation process. Through laws and regulations, the mediator's role can be strengthened in summoning the disputing parties. Although the settlement through mediation is voluntary, it does not mean that in the settlement process, the parties can take mediation lightly through an attitude of not being present in mediation. It is time for the disputing parties to submit to and comply with the mediation procedure. In addition, it is hoped that the coercive power given to the mediator in the case of summoning the disputing parties can increase the agreement in mediation.

4. CONCLUSION

The mediator has an essential role in the mediation process for the settlement of industrial relations disputes. Strengthening the role of mediators must be carried out as an attraction for payment through mediation and reducing the number of cases that go to court. Strengthening can be done through 1. Efforts to increase understanding of industrial relations and settlement of industrial relations disputes, to obtain appropriate recommendations; 2. Mediators have the primary function of reconciling the two parties, so it is necessary to make special regulations regarding the profession of the mediator to continuously improve skills through direct training to mediators who have reconciled many parties to the dispute. 3. There must be a positive law that contains the obligations of the disputing parties to come to the mediation event when called by the mediator.

REFERENCES

[1] M. H. M. Marwa, F. Muhammadi, and M. N. Syuhada, "Mitigasi Perkawinan Anak di Tengah

Pandemi Covid-19 Melalui Sekolah Pra Nikah bagi Ikatan Pelajar Muhammadiyah Klaten," *J. Dedik. Huk.*, vol. 1, no. 2, pp. 123–134, Aug. 2021, doi: 10.2229/JDH.V1I2.16870.

- [2] A. I. Fahrika and J. Roy, "Dampak pandemi covid 19 terhadap perkembangan makro ekonomi di Indonesia dan respon kebijakan yang ditempuh," *INOVASI*, vol. 16, no. 2, pp. 206–213, Nov. 2020, doi: 10.29264/JINV.V16I2.8255.
- [3] I. Anggraeny and N. P. Hidayah, "Keabsahan Perjanjian Kerja Waktu Tertentu Dengan Konsep Remote Working Dalam Prespektif Undang-Undang Cipta Kerja," *J. Huk. dan Kenotariatan*, vol. 5, no. 1, pp. 52–73, Feb. 2021, doi: 10.33474/HUKENO.V5I1.9262.
- [4] S. Suherman and A. D. Putri, "Legal Protection on Workers' Unilateral Wages Deductions Due to the Covid-19 Pandemic," *Int. J. Multicult. Multireligious Underst.*, vol. 7, no. 10, pp. 445–457, Nov. 2020, doi: 10.18415/IJMMU.V7I10.2157.
- [5] N. P. Hidayah, "Comparative study of legal protection for migrant workers in participation of social security programs in Indonesia and Singapore | Legality : Jurnal Ilmiah Hukum," *Legality*, vol. 28, no. 1, Mar. 2020, Accessed: Sep. 30, 2021. [Online]. Available: <https://ejournal.umm.ac.id/index.php/legality/article/view/11786>.
- [6] D. Mardiansyah, "The Corona Virus and Labor Rights Issues: How Do Workers Get Their Rights?," *Indones. J. Int. Clin. Leg. Educ.*, vol. 2, no. 2, pp. 129–146, Jun. 2020, doi: 10.15294/IJICLE.V2I2.38328.
- [7] H. Julaika, "Pandemi Covid-19 Timbulkan Tantangan Baru Ketenagakerjaan," <https://mediaindonesia.com/>, Jul. 14, 2020. <https://mediaindonesia.com/ekonomi/328159/pandemi-covid-19-timbulkan-tantangan-baru-ketenagakerjaan> (accessed Sep. 30, 2021).
- [8] D. Asterina, "Inilah Hasil Kolaborasi Riset antara LIPI, Kemnaker dan Lembaga Demografi FEB UI Fakultas Ekonomi dan Bisnis Universitas Indonesia," *feb.ui.ac.id*, 2020. <https://www.feb.ui.ac.id/blog/2020/05/26/inilah-hasil-kolaborasi-riset-antara-lipi-kemnaker-dan-lembaga-demografi-feb-ui/> (accessed Sep. 30, 2021).
- [9] D. M. Martanti, F. Magdalena, N. P. D. Ariska, N. Setiyawati, and W. C. B. Rumboirusi, "Dampak Pandemi Covid-19 terhadap Tenaga Kerja Formal di Indonesia," *Populasi*, vol. 28, no. 2, pp. 52–69, Jan. 2021, doi: 10.22146/JP.63345.
- [10] N. P. Hidayah, Q. R. Cloet, and D. Pradhan, "The Implementation of Labor Development

- Principles According to Job Creation Law as a Reason to Protect Wages Rights,” *BESTUUR*, vol. 9, no. 1, pp. 68–76, Aug. 2021, doi: 10.20961/BESTUUR.V9I1.49252.
- [11] J. Feng and P. Xie, “Is mediation the preferred procedure in labour dispute resolution systems? Evidence from employer–employee matched data in China;,” <https://doi.org/10.1177/0022185619834971>, vol. 62, no. 1, pp. 81–103, Apr. 2019, doi: 10.1177/0022185619834971.
- [12] K. Benuf and M. Azhar, “Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer,” *J. Gema Keadilan*, vol. 7, no. 1, p. 20, 2020.
- [13] L. LESTARI, “Peranan Mediator Dalam Proses Penyelesaian Perselisihan Hubungan Industrial (Studi Kasus Dinas Tenaga Kerja Provinsi Sumatera Utara),” Universitas Medan Area, 2019.
- [14] Tribunnew.com, “Kemnaker: 29,4 Juta Pekerja Terdampak Pandemi Covid-19, di-PHK Hingga Dirumahkan - Tribunnews.com,” [tribunnews.com](https://www.tribunnews.com), 2021. <https://www.tribunnews.com/bisnis/2021/03/27/kemnaker-294-juta-pekerja-terdampak-pandemi-covid-19-di-phk-hingga-dirumahkan> (accessed Sep. 30, 2021).
- [15] I. Anggraeny, T. Tongat, and W. D. Rahmadanti, “Urgensi Pelaksanaan Tahapan Persiapan Penyusunan Kontrak Oleh Pelaku Bisnis Dalam Mengkontruksi Hubungan Bisnis,” *Yurispruden J. Fak. Huk. Univ. Islam Malang*, vol. 3, no. 1, pp. 1–11, Jan. 2020, doi: 10.33474/YUR.V3I1.5013.
- [16] H. U. Taqiuddin, “Pelatihan Mediasi Desa Di Desa Bonder,” *Abdinesia J. Pengabd. Kpd. Masy.*, vol. 1, no. 2 Agustus, pp. 67–72, Sep. 2021, Accessed: Oct. 01, 2021. [Online]. Available: <https://unu-ntb.e-journal.id/abdinesia/article/view/115>.

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