

A Simplification of Industrial Relation Dispute Solution to Improve the Nation's Competitiveness

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Abstract: Indonesia as a country has been dealing with a huge number of work force for decades. The number of worker population that raise to 6.13 million and unemployed down to 0.28 percent per February 2017 comparing to August 2016 are the recent situation the government has to deal with. The total labor market in February 2017 is 131.55 million but the working population in Indonesia per 2017 is as much as 124.54 million people with 38.08 percent of them reported as workers. At present, Indonesia participates in ASEAN Economic Society. The ASEAN Economic Community is an integration in facing the free international trade that occurs among ASEAN countries to realize the ASEAN insight in 2020. ASEAN Economic Community system gives us a lot of benefits. On the other hand, ASEAN Economic Community also have negative impacts for Indonesia. The way to avoid the negative impacts of the ASEAN Economic Community is by improving the human and industrial resources in Indonesia. With the large number of workers nowadays and the participation of Indonesia in the ASEAN Economic Community might lead into many problems in the work worldwide between workers and employers. The problems between workers and employers are resolved in a long time and long way which gives a loss to workers. For the settlement of industrial relations disputes based on Law Number 2 Year 2004 on Industrial Relations Dispute Settlement. In solving the dispute we could took a long way, such as: (1) Bipartite negotiations; (2) Settlement industrial relation dispute in man power officers; (3) The party or parties could choose for the conciliation or arbitration, if there is no choice, could by mediation; (4) If the mediation fails then it will resolve through an industrial relations court. Completion with long time (duration) and long stages might cause worryness of investors who will invest in industrial sector in Indonesia. It will considered as an indicator of the government's failure to regulate the employment situation in Indonesia. Therefore a simpler, efficient and quicker solution is needed. The state of problem: Determining a simpler, effective and quicker model of resolution in industrial relations problem for state innovation competition.

1 INTRODUCTION

Every human being needs a job to fulfil their needs. (Ramli, 2008) that makes them have the same right to get a job. This is the implementation from Human Rights (Baut, 1988) that set forth points in the Universal Declaration of Human Rights. (Brownlie, 1993)

Article 1 Everyone is born independent and has the same dignity and rights

Article 2 Everyone has the right for freedoms with no exceptions whatsoever, such as nationality, color, sex, language, religion, politics or other opinion, national or community origin, property, birth or any other position

Article 3 Everyone is entitled to the livelihood, liberty and salvation of a person

In order to meet the daily needs, not everyone can be a master for himself. Many people have to work for others. People who work for other people are called workers or employee and people who give jobs are called employers. Workers and employers are the two parties who have different interests which might lead into a conflict. The resolution of the conflict does not only involve both parties but also the government and its policies. (Jeffrey, 2013) With a good and wise solution, our country, based on its economic growth, is expected to be a competitive country.

2 METHOD

This method used in this research is the purposive random sampling.

Research Subject: The subjects of study are the workers, the employers, labour department officer in Surabaya, Mojokerto, Pasuruan and Sidoarjo.

Settings: *PIER* (Pasuruan Industrial Estate Rembang), *SIER* (Surabaya Industrial Estate Rungkut), Ngoro Industrial Park (Mojokerto), SiRIE (Sidoarjo Rangkah Industrial Estate).

Procedures: The study uses in depth interview, questionnaire, and literature research. Some questions are stated on questionnaire papers.

About: the matter of dispute, how to solve the problem (by personal or involving a worker union and how to solve it) and what the result.

Data Collection: The data will be collected from questionnaires and in depth interviews to determine the best and simple solution for all parties.

2.1 Research Tools

The matter of dispute, how to solve the problem (settlement between worker and employer or settled by labor department officer) and the result. This questionnaire is compiled for the matter of dispute, how to solve the problem and what's the result. It was a self-made questionnaire containing information on sex of worker, education, the kind of dispute and the model of resolution.

2.2 Research Conducting Method

At first, we elaborate about industrial relation dispute among the worker and employer. Analyse the problem and the ways to solve it (by themselves, by the labor department officer or until the court level).

In this research, data analysis was not performed by statistic form or statistic model but by analysing in sosio-legal model. The datas collected from some workers and some factories in different places.

We use some questionare completed by in depth interview.

The questionare for the workers contains of :

- Age;
- Sex;
- Education;
- Job;
- Employee tenure;
- The status in the factory;
- Number of problems occur in the factory;
- Problems encountered;

- How to solve the problem (by themselves, by the labor department officer or until the court level);

- The result?

The questionnaire for the employers contains of :

- Age;
- Sex;
- Educations;
- Job;
- How long as an employer;
- The status in the factory;
- Number of problems occur in the factory;
- Problems encountered;
- How to solve the problem (by themselves, by the labor department officer or through the court);
- The result?

The questionnaire for the labor department officer contains of :

- Age;
- Sex;
- Educations;
- Job;
- Employee tenure;
- Success level of problem solving;
- Actions taken if problem solving fails;
- Problems encountered.

2.3 Finding

2.3.1 Human Right and The Right for Working

Human rights are the basic rights that every human being possesses because of his dignity as a human being and not given by society or State but derived from God Almighty. (d'Amato. 2007)

The Four Freedoms were goals articulated by United States President Franklin D.Roosevelt on Monday, January 6, 1941. In a address known as the Four Freedoms speech, he proposed four fundamental freedoms that people "everywhere in the world" ought to enjoy:

- Freedom of speech;
- Freedom of worship;
- Freedom from want;
- Freedom from fear.

Additional kind of human freedom needed along the growth of era's development. People was free in terms of expressing opinions, freedom of religion, worship and belief, freedom of will, freedom from fear now includes the freedom to earn income for decent living for humanity. Workers and employers need each other.

Indonesia is ranked among the 11 highest competitive countries in Asia Pacific, after Singapore, Japan, Hong Kong, New Zealand, China Taipei, Australia, Malaysia, South Korea, China, and Thailand. Indonesia is unable to compete with China because of bureaucratic and political issues is the assumption to be one of the main causes of high cost economy. Indonesia's weaknesses in terms of employment are (Aditya Warman, 2016)

- Competence is low;
- The quality of education is low;
- Infrastructure that still have a lot to clean up;
- Rigid employment arrangements.

Many problems arise between workers and employers because of two different points of view and finally because neither side is willing to succumb to causing a deadlock here and there so that a strike is one option. Strike is one form of rejection. To overcome individual and group resistance, Coch and French Jr propose six tactics: (Dirjen, 2016)

- Education and communication is to provide an explanation of the background, purpose, consequence of the holding of change;
- Participate, invite all participate in making decisions, the leader only as a facilitator of the motivator;
- Provide ease and support;
- Negotiations with resistant parties to change;
- Manipulation and co-optation that covers the actual conditions with more interesting, spreading rumors and more;
- Coercion, give threats and impose a penalty that is resistant.

55% of the workforce in Indonesia consists of a lower-level or low-educated workforce that is prone to conflict. Conflict between workers and employers causes Indonesia's investment attractiveness to decline. Not all entrepreneurs understand well how to manage risk management in industrial relations, so their thought is about solving problems rather than taking precautions. In such circumstances law enforcement from the government as regulator is inadequate so strike becomes the only way to solve the problem and it is feared by investors.

In this research note that in working relationship between workers and entrepreneurs prone to conflict with a different point of view. Due to the lack of understanding of which conflict management is better preventing than resolving conflicts, there are strikes. This strike is feared by investors.

2.3.2 Dispute Resolution Model for State Innovation Competition

The third generation of human rights interconnect and conceptualize the value demands relating to the previous two generations of human rights. There are 6 (six) human rights demanded. The rights are:

- The right to self-determination in the political, economic, social and cultural fields;
- The right to economic and social development;
- The right to participate and utilize the "common heritage of mankind" (shared space-space resources, scientific and technical information and progress, and cultural traditions, locations and monuments);
- The right to peace;
- The right to a healthy and balanced environment;
- The right to natural disaster relief.

The definition of rights is not also defined, but a core contained in the right, ie the existence of a claim, that speaks of our right to imagine that there is a "claim" and in relation to the legal protection for the people imagined a "claim" from the people: and in this case Louis Henkin in his article entitled *The Rights of Man Today*, says: (Hadjon, 2007)

"...human rights are claims asserted recognized "as of right", not claim upon love, or grace, or brotherhood or charity : one does not have to earn or deserve them. They are not merely aspirations or moral assertions but, increasingly, legal claims under some applicable law."

Concerning to the existence of conflicts by defending their respective rights, employers and workers should recognize the root causes and challenges facing the Indonesian economy and explore and establish a framework for genuine and active social partnerships to support industrial tranquility and revitalize existing sectors.

Several stages in the settlement of the dispute make Indonesia classified as a country that has weak competitiveness in the industrial sector

The Stages applied so far based on Law Number 13 Year 2003 and Law Number 2 Year 2004 are as follows:

- Bipartit;
- Tripartite;
- Mediation;
- Industrial Relations Court.

Before make a process at Industrial Relation Court, the worker prefer to choose the strikes. According the worker, strikes are the last effort after struggling over non-fulfillment of rights or disputes

takes place. The ideal and detail ways in handling problems occurred in companies based on Act No. 2 of 2004 on Industrial Relations Dispute Settlement Act are:

1. Completed bipartite settlement between workers and employers

2. If the dispute could not be completed at the company level, then resolved through employees in the local manpower office

3. If the dispute still could not be resolved by employees in the labor service then the parties are asked to choose arbitration or conciliation settlement

4. If the parties do not choose for arbitration or conciliation then this dispute shall be settled through mediation in accordance with applicable law.

5. If the agreement has not reached, the dispute should be settled through the industrial relations court.

Finally, they need a quick and effective solution before taking it to the court and conducting a strike to reach the quick solution. But the result might not be uncertain. They could both fail and success as well.

From this research, another reason why the workers need a different solution to solve the problem by out of court is, according to the workers, the solution based on regulation takes a long time and rigid. Solution by law through the court makes the parties become rivals. As their dispute solutions, the workers want the flexible management to fulfill their need. On the other hand, according to the employer, solution through the court decision gives benefit and certainty for them.

According to the union worker, many cases are solved through the court decision and it's more satisfying for the union. Unfortunately, not all workers joint with the union.

If both parties don't get a solution or agreement for the dispute, the strike will be the "final solution" to conduct. To minimize the industrial relations disputes and strikes, both parties should build an effective communication. The next revolution in technology is going to be much more about focusing on the human dimension, making technology easier for people to use. Usually, strike action (which is the total withdrawal of labour) results in a fundamental breach of an employment contract. (Barrow, 2016) Strike is a basic right of workers as a reflection of the Constitution of the Republic of Indonesia 1945 Article 28 E Paragraph (3): Everyone has the right to freedom of association, assembly and expression. Thus the Constitution provides guarantees for expressing opinions including strikes (Aditya Warman, 2016)

In research many parties want the abolition of the Industrial Relations Court because it makes the longer the process of industrial relations settlement. With a harmonious relationship between the parties raises the following implications:

- Recognize and respect their basic rights and interests in accordance with the laws and regulations of the Republic of Indonesia and the ILO Conventions;
- Receive a meeting point or conflict of interest between workers and employers. The efforts of both parties as far as possible accommodate or accommodate their respective interests. In order to maintain harmony of relationships also need to have a conflict resolution that occurs in a way that benefits both sides;
- Increase close cooperation to develop trust and capacity building mechanisms and foster an environment that supports these principles and processes.

3 CONCLUSIONS

The settlement dispute give some ways for the solution. Therefore a simpler, efficient and quicker solution is needed. Situation and condition that are not expected can occur, such as:

- a. Strike
- b. Lock out
- c. Anarchy
- d. Damage
- e. Lossing
- f. Termination
- g. Unemployment

All situations above make the industrial relation not conducive. The topics of disagreement that caused to the strike are:

1. collective labor agreement
2. review the labor law
3. Industrial relationship
4. social-security
5. Payment or salary

Until now strike usually chosen despite the strike not reflection the deadlock.

The points could led to the failure of the negotiations that could be strike, among others:

1. Lack of awareness attitude from the mediator
2. Lack of openness from the parties
3. The Mediator only focus on suggestions
4. The Mediator is not competent to solve the problem
5. There have no minimum standards of mediation process

For further, we should arising again the awareness for good solution with local wisdom like: “musyawarah untuk mufakat” as the good choice for innovation problem solving.

By using the local wisdom means we build the gate of peace in industrial relationship

Difficult settlement between workers and employers caused by the complexity of the way handling disputes. This led to a decrease in investor interest.

4 RECOMMENDATION

We need to simplify the process of industrial relations disputes by cutting the length and complexity of the process of obtaining justice. The pruning lies in the elimination of the settlement process in court. This is indispensable because to support the state competition in the economy by minimizing the prolonged labor conflict. To make simple the process, we must avoid industrial court process. It's enough by bipartite, tripartite, mediation but if mediation fail, they could go to court as the cases in normally, not special court in industrial court. This condition could support the nation competitiveness.

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