

Implementation of Article 87 Law Number 2 of 2004 Concerning Resolution of Industrial Relations in the Court of Industrial Relations in Article of the Republic of Indonesia

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Abstract

The formulation of article 87 of Law Number 2 of 2004 in its implementation still requires firmness to provide certainty that what is meant by trade unions / labor unions that can become legal counsel to proceed at the Industrial Relations Court to represent their members are trade unions / labor unions located in in the company or including labor unions / labor unions outside the company. The purpose of this study is to describe / describe the rights and authority of trade unions / labor unions as legal counsel in the process of resolving industrial relations disputes along with descriptions (describing) the legal consequences related to the rights and authority of trade unions / labor unions .The type of research used is normative law which is intended to examine the provisions of positive law. The method of approach used in this study is the approach: normative law, which examines the legal norms that apply, both in the form of laws, implementing regulations and other regulations that have links with the issues discussed in the study. Settlement of industrial relations disputes can be done through resolutions outside the Industrial Relations Court (Non-Litigation) and in the Industrial Relations Court (Litigation). Implementation of Article 87 of Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes, in the Decision of the Supreme Court of the Republic of Indonesia Number 933K / PDT.SUS / 2009 dated May 5, 2010 and Number 488K / PDT.SUS / 2012 dated October 22, 2012, referred to as trade unions / labor unions has a *legal standing* representing its members proceeding in the Industrial Relations Court is a trade union / labor union both inside and outside the company.

Keywords: Law of Attorney of Trade Unions, Industrial Relations Disputes Industrial Relations Court.



A. INTRODUCTION.

Manpower development is carried out to improve the quality of the workforce and its participation in development and to improve the protection of workers and their families in accordance with human dignity and dignity [1]. In the development of the next employment sector to settle industrial relations disputes, a labor dispute resolution institution called the Industrial Relations Court was formally inaugurated for all of Indonesia on January 14, 2006 by the Chairperson of the Supreme Court of the Republic of Indonesia together with the Minister of Manpower and Transmigration of the Republic of Indonesia at the Court Negeri Padang, West Sumatra. The Industrial Relations Court is tasked with providing the determination of industrial relations

disputes [2]. The purpose of the establishment of the Industrial Relations Court is with the assumption that, in the era of industrialization, industrial relations disputes are increasingly complex and complex so that institutions and mechanisms for resolving industrial relations disputes are fast, precise, fair, and inexpensive [3]. While the settlement of industrial relations disputes previously based on Law Number 22 of 1957 concerning Settlement of Labor Disputes and Law Number 12 of 1964 concerning Termination of Employment in Private Companies, apparently the process was not in accordance with the needs of the community [4]. As for the process of resolving labor disputes, the mechanism is through P4D and P4P if it is not completed then according to Law No. 5 of 1985 concerning State Administrative Court, the decision of P4P can be appealed to the State Administrative High Court and if it is not completed then the parties can take an appeal to the Supreme Court. However, with the establishment of the Industrial Relations Court based on Law Number 2 of 2004, several new problems arose, one of them was the tasks and functions of the trade unions / labor unions as stipulated in Article 87 which reads: Trade unions / labor unions and the employers' organization can act as a legal representative to proceed at the Industrial Relations Court to represent its members [5].

Formulation of sound P origin 87 of Law Number 2 of 2004 in its implementation still requires firmness in order to provide certainty that what is meant by trade unions / labor unions that can become legal counsel to proceed at the Industrial Relations Court to represent their members are trade unions / labor unions inside the company or including labor unions / labor unions outside the company. The question needs to be answered because in the current procedural law in the Industrial Relations Court, for trade unions / labor unions if they want to prove that workers / laborers are true members, then the union / labor union is enough just to show a union membership card / labor unions and evidence of registration of trade unions / labor unions at the agency responsible for the field of local employment and then photocopies are submitted to the Panel of Judges who examine and hear the case, so that it is possible for unions / labor unions outside the company as long as they can show membership cards as union members the worker / labor union of the worker / laborer he represents, the labor union / labor union has a *legal standing* to conduct defense efforts at the Industrial Relations Court. This confusion has led to multiple interpretations among trade unions / labor unions based on their respective interests which in turn creates uncertainty in the struggle of trade unions / laborers in defending the interests of workers / laborers, to claim their rights. Based on the reasons for the author in this thesis to choose the title.

Based on the description above, the problem formulation in this thesis is limited to problems that can be stated as follows:

1. What is the mechanism for resolving industrial relations disputes?
2. How is the implementation of Article 87 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes in the Decision of the Supreme Court?

In general, the objectives to be achieved in this study are: To describe / illustrate the rights and authority of trade unions / labor unions as legal counsel in the process of resolving industrial relations disputes along with the description (describing) legal consequences related to the rights and authorities of trade unions / trade unions, as well as further to find out the legal certainty of the rights and authority of trade unions / labor unions as stipulated in the provisions of Article 87 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. The definition of industrial relations disputes in the previous law, namely Law Number 16 of 1951 concerning Settlement of Labor Disputes, hereinafter referred to as labor disputes, "the definition of labor disputes is formulated as a conflict between the employer or the employer's union and the labor union or a number of workers in connection with the absence of a conflict of understanding. Regarding work relations and/or labor conditions [6].

Definition of rights disputes according to Law Number 2 of 2004, namely: disputes arising from non-fulfillment of rights, due to differences in implementation or interpretation of the provisions of the Statutory Regulations, Work Agreements, Company Regulations, or Collective Labor Agreements [7]. Disputes can occur due to negligence, or due to differences in implementation or interpretation, or non-compliance with one or the parties in implementing the normative provisions set out in the legislation or work agreement. Workers as citizens have equality in the law, the right to get decent work, express opinions, gather in one organization and establish and become a member of a trade / labor union. Whereas the right to become a member of a trade union / labor union is a labor right that has been guaranteed in Article 28 of the 1945 Constitution. From this description, it can then be drawn into a dispute between trade unions / labor unions that is formulated, namely disputes between trade unions / labor unions others are only in one company, because there is no conformity of understanding regarding membership, exercise of rights and union of work [8]. Definition of work termination disputes namely termination of employment due to a certain thing that results in the termination of rights and obligations between workers/laborers and employers [9]. However, termination of employment can also be understood as: a dispute arising because there is no conformity of opinion regarding termination of employment by a party [10]. Of the two terms of termination of employment, it means that in disputes termination of employment itself there are 2 (two) parties directly involved, namely: the employer and the worker/laborer. Employers and workers / laborers in work relationships have interests that sometimes go hand in hand and in harmony but sometimes they also conflict. The definition

of entrepreneur is an individual, a partnership or a legal entity that operates a self-owned enterprise an individual, a partnership or a legal entity that independently operates a company not its own, an individual, partnership or legal entity residing in Indonesia representing the Company as referred to in letters a and b domiciled outside the territory of Indonesia [11]. The meaning of workers / laborers is: every person who works by receiving wages or rewards in other forms [12]. The definition of trade unions/labor unions are: organizations formed from, by, and for workers/laborers both in companies and outside companies, which are, free, open, independent, democratic and responsible for fighting for, defending and protecting their rights and interests workers / laborers and improve the welfare of workers / laborers and their families [13].

B. METHOD

The type of research used is normative law which is intended to examine the provisions of positive law. The method of approach used in this research is the approach: normative law, which examines the legal norms that apply, both in the form of laws, implementing regulations and other regulations that have links with the problems discussed in the study. The procedure adopted in the collection of secondary legal material by conducting a literature study, documentation and from the results of the seminar is to read, study and inventory the literature relating to the issues discussed. The analysis of legal materials used in this study uses descriptive and explanatory analysis. Qualitative methods do not use statistical tests, but the legal material is described and arranged according to the priority scale, then explained with the main problem being discussed. This research focuses on positive law by using deduction reasoning methods which are based on normative and evaluative aspects, with the hope of obtaining pragmatic truth, in the sense that the results obtained will be utilized for legal development as planned.

C. RESULT AND DISCUSSION

Han association working always dreamed of conditions of employment harmonious, dynamic and socially equitable but not infrequently because of their other interests of the parties to the employment relationship resulted in its interests is not in line anymore, even sometimes contradict one another. Therefore, if there is a conflict because of different interests, then the settlement is first done through an out-of-court settlement and then if no agreement is reached, the next settlement is resolved through the Court.

1. Settlement of Industrial Relations Disputes outside the Industrial Relations Court (Non Litigation)

Industrial disputes, the mechanism must first be resolved through legal proceedings outside the Industrial Relations Court (*Non-Litigation*) that bipartite negotiations, mediation, conciliation or arbitration. In practice, the out-of-court settlement is broadly divided into two parts, firstly the settlement by the parties themselves is called bipartite settlement and then the second is the settlement with the help of a third party. Understanding the legal process of resolving industrial relations disputes in a bipartit manner is the settlement through negotiations between workers / laborers or trade/labour unions with employers to resolve industrial relations disputes [14]. The best dispute resolution, according to Harahap is a Bipartite settlement, because settlement through Bipartite means that the settlement by the disputing parties will be the most beneficial solution for both parties, in the form of substantial or psychological benefits, the most important are:

- a. Settlement is informal meaning settlement through a conscience approach, not based on law. Both parties break away from the rigidity referred to in legal terms (*legal term*) to a conscientious and moral approach. Keeping away the doctrinal approach and the principle of proof towards equality of perception that is mutually beneficial.
- b. What resolves the parties' own disputes means that the settlement is not left to the will and will of the judge because they are the ones who know more about the truth and truth of the dispute in question.
- c. The short duration of the settlement means that the settlement will be completed quickly and is usually enough for one or two weeks so that it is different from the settlement in the court which takes a long time.
- d. Low cost means that there is virtually no cost, this is different if the settlement is carried out with a court that requires time and labor.
- e. Proof rules do not need to mean that there is no need for a fierce battle to argue with each other and knock each other down.
- f. The settlement process is confidential, meaning that the settlement is closed to the public.
- g. The relationship between the parties is cooperative in nature, meaning that the settlement is based on mutual benefit.
- h. Communication and focus of resolution means that peace efforts are realized through active mutual communication between the parties that radiates a desire to correct past disputes and mistakes towards better relations for the future.
- i. The intended outcome is the same as the meaning of the same win based on a *win win solution* by distancing yourself from the selfish, greedy nature and winning yourself.

- j. Free of emotion and vengeance means to reduce the high emotional nature and flare up towards emotion-free atmosphere during the settlement and after the completion is reached [15].

2. Settlement of Disputes through Mediation

Mediation of industrial relations is the settlement of rights disputes, disputes of interest, disputes over termination of employment, and disputes between trade unions/labor unions in only one company through deliberations mediated by one or more neutral mediators [16]. Settlement disputes through mediation include settlement of disputes over rights, disputes of interest, disputes over termination of employment and disputes between trade unions/labor unions in one company. Settlement through mediation is carried out by deliberations mediated by one or neutral Mediators. After receiving complaints from the parties to request the settlement of the case through mediation. Mediators take settlement steps as follows:

- a. Conduct case file research.
- b. Conduct mediation hearing no later than 7 (seven) working days after receiving the delegation of tasks to resolve disputes.
- c. Calling the parties in writing to attend the hearing taking into consideration the calling time so that the mediation session can be held no later than 7 (seven) working days of receiving the assignment to resolve the dispute.
- d. Conduct mediation hearings by seeking deliberations to reach consensus.
- e. Issue a written recommendation to the parties if the settlement does not reach agreement within no later than 10 working days from the first mediation session.
- f. Helps to make a joint agreement in writing if an agreement is reached for settlement, which is signed by the parties and witnessed by the mediator. Inform the parties to register the mutual agreement that the parties have signed to the Industrial Relations Court.
- g. Make mediation treatises.

3. Settlement of Disputes through Conciliation

Definition of Industrial Relations Conciliation is the settlement of disputes of interest, disputes over termination of employment or disputes between trade unions/labor unions in only one company through deliberations brokered by one or more neutral conciliators [17]. Law Number 2 of 2004 accommodates community involvement in the resolution of industrial relations disputes, including by providing opportunities to become conciliators in the resolution of industrial relations disputes through the conciliation process. Conciliator is an official who fulfills the requirements as a conciliator determined by the Minister of Manpower.

The conciliator's task is to carry out conciliation by deliberation and if it cannot be resolved by deliberation, the conciliator's obligation to provide written advice to the disputing parties in resolving disputes of interest, disputes regarding termination of employment and disputes between trade unions/labor unions in one company. In carrying out its duties the conciliator is obliged to:

- a. Calling the Parties to the dispute to be asked for information needed information.
- b. Regulate and lead negotiations.
- c. Help make a joint agreement if an agreement is reached.
- d. Make recommendations in writing if no agreement is reached.
- e. Making minutes of the settlement of industrial relations disputes.
- f. Making reports on the results of industrial relations disputes [18].

4. Settlement of Disputes through Arbitration

Arbitration is a way of settling a civil dispute outside the general court which is based on an arbitration agreement made in writing by the parties to the dispute [19]. Whereas the definition of industrial relations arbitration is the settlement of a dispute of interest, and disputes between trade unions/labor unions in only one company, outside the Industrial Relations Court through a written agreement from the disputing parties to submit the dispute resolution to the arbitrators whose decisions are binding on the parties and are of a nature the final [20]. Settlement of industrial relations disputes through arbitrators is carried out based on the agreement of the disputing parties. The agreement of the disputing parties is stated in writing in the arbitration agreement, which is made in triplicate and each party gets one and has the same legal force. The arbitration agreement in the dispute over the settlement of industrial relations shall at least contain:

- a. Full name and address or place of residence of the disputing parties.
- b. The subject matter which becomes a dispute and which is submitted to arbitration to be resolved and made a decision.
- c. Number of arbitrators agreed.
- d. Statement of the parties to the dispute to submit to and execute the arbitral award, and
- e. Place, stay making agreement letters and signatures of the disputing parties [21].

5. Settlement of Industrial Relations Disputes through the Industrial Relations Court (Litigation)

The Industrial Relations Court is a special court established within the District Court that has the authority to examine, hear and give decisions on Industrial Relations

Disputes [22]. To guarantee a quick, precise, fair and cheap settlement, the settlement of industrial relations disputes through the Industrial Relations Court in the general court environment is limited in its process and stages by not opening the opportunity to file an appeal to the High Court [23]. Decisions of the Industrial Relations Court relating to disputes over rights and disputes over termination of employment can be appealed directly to the Supreme Court, while the Industrial Relations Court decisions concerning disputes of interest and disputes between trade unions/labor unions in one company are the first and last decisions an appeal cannot be appealed to the Supreme Court.

6. Establishment of Industrial Relations Court is a Substitute for the Labor Dispute Settlement Committee (P4)

The establishment of the Industrial Relations Court is based on Law Number 2 of 2004 as a substitute for the Labor Dispute Settlement institution that was previously still handled by the Regional Labor Dispute Settlement Committee (P4-D) and/or the Central Labor Dispute Settlement Committee (P4-P) based on the Law on Settlement Number 22 of 1957 concerning Settlement of Labor Disputes and Law Number 12 of 1964 concerning Termination of Employment in Private Companies. The background for the establishment of the Industrial Relations Court is caused by the following matters:

- a. Based on Law Number 2 of 2004 in terms of the way dispute resolution can be carried out outside the Industrial Relations Court (non litigation) through bipartite, conciliation or mediation or arbitration or in court (litigation) through the Industrial Relations Court and the Supreme Court, whereas the former was legal settlement out of court (non litigation) through bipartite, arbitration (if agreed) and if not agreed to proceed to the Intermediary Employees, the Manpower Office, the Regional Labor Dispute Settlement Committee (P4-D) and/or the Central Labor Dispute Settlement Committee (P4-P) to the veto of the Minister of Manpower and in the court (litigation) through the State Administrative Court, the High State Administrative Court up to the Supreme Court.
- b. The membership of the Industrial Relations Court Assembly consists of 1 (one) career judge and 2 (two) ad hoc judges as representatives of trade unions / labor unions and employers' organizations, while the Regional / Central Labor Dispute Settlement Committee Assembly is tripartite consisting of 5 (five) representatives of the Government and 5 (five) representatives from employers and 5 (five) representatives from trade unions / labor unions.
- c. The implementation of the decision of the Industrial Relations Court is carried out by the Industrial Relations Court itself, while for the decision of the Regional

Labor Dispute Settlement Committee, it is requested to the District Court where the Defendant Businessperson is located while for the decision of the Central Labor Dispute Settlement Committee the Central Jakarta District Court is requested.

- d. Case costs at the Industrial Relations Court for the value of the claim under Rp. 150,000,000 (one hundred and fifty million rupiahs) are not charged including the cost of execution, while the Regional/Central Labor Dispute Settlement Committee is asked for fiat execution at the District Court to apply general tariffs in accordance with applicable procedural civil law.
- e. In the Industrial Relations Court there are restrictions on the types of disputes that can be taken by the cassation remedies, namely: rights disputes and termination of employment, whereas in legal proceedings on the decisions of the Regional / Central Labor Dispute Settlement Committee, there is no limit on the types of disputes that can be taken by the cassation remedies.
- f. There was no government interference with the Industrial Relations Court's ruling, whereas the Regional/Central Labor Dispute Settlement Committee had government interference in the form of a veto of the Minister of Labor.
- g. Decision of the Industrial Relations Court is not the object of a State Administration lawsuit, whereas the Decision of the Regional/Central Labor Dispute Settlement Committee Decree since the enactment of Law Number 5 of 1986 may be the object of a lawsuit at the State Administrative Court up to the Supreme Court [24]. So that with the improvements in the system mentioned above can realize a simple, fast and low cost judicial process in handling and resolving industrial relations disputes.

7. Mechanisms for Settling Industrial Relations Disputes in the Industrial Relations Court

The process of settling industrial relations disputes in the Industrial Relations Court is that the event law is a civil procedural law that applies to the general court [25]. So that the process of settling industrial relations disputes in the Industrial Relations Court systematically through the stages of the trial which can be described as follows. In the event that mediation or conciliation does not reach an agreement, one of the parties or two parties can file a lawsuit to the Industrial Relations Court, whose jurisdiction covers the place where the worker / laborer works. The claim was filed by the plaintiff himself and there is no obligation or legal obligation for the plaintiff to file a claim must be represented by an advocate [26]. The lawsuit that has obtained the case register number, then by the Chair of the Industrial Relations Court, a panel of judges is set up, then the Registrar/Secretary of the Industrial Relations Court appoints a Substitute Registrar and a Replacement Clerk who will assist the judges in examining

and deciding their cases [27]. The panel of judges who have been appointed by the Chair of the Industrial Relations Court to examine and decide on a case of industrial relations disputes, are obliged to examine the contents of the lawsuit, if all provisions have been fulfilled, then determine the day and date of the trial for summons of the parties to be called by the Substitute Sita. Determination of the day and date of the hearing by the panel of judges, is done in writing, in the format of the determination that is available. And no later than 7 (seven) working days after the determination of the panel of judges, the chairman of the panel of judges must conduct the first hearing. After the day and date of the first hearing was determined by the panel of judges, the summons of the parties were then carried out by the Bailiff. The grace period for the call with the day and date of the trial is at least 3 (three) empty days. In the trial process, the parties may sometimes be present directly at the first trial, but it also happens, one or both parties are not present at the first trial, if this happens, then those who are absent will be called again with notes. If the plaintiff does not attend and has been summoned 2 (two) times appropriately then the lawsuit is declared null and void. If the defendant is absent after being summoned twice in a row, the case investigation will continue with the trial without the defendant present. In the process of giving up, which regulates the legal relations of both individuals and as legal entities, if there is a dispute / dispute between the parties, the settlement is put forward for peace because peace is believed to be a very satisfying form of settlement and has a sense of justice for both parties.

a. Various kinds of Law

1). Quick Event Ceremony.

If there are interests of the parties and / or one of the parties is sufficiently urgent that must be concluded quickly, the parties or one of the parties can submit a request for a quick hearing to the Chair of the Industrial Relations Court.

2). Have an Event with Ordinary Events

The ordinary inspection process is carried out by the determination of the panel of judges by the Chair of the Industrial Relations Court. Within not later than 7 (seven) days from the date of stipulation, the Chairperson of the Panel of Judges must have determined the day and date of the hearing, which will then summon the parties to appear before the court for the first trial [28].

b. Lawsuit Readings

Non-achievement of peace efforts between the parties was noted in the minutes of the hearing. Then the examination continued with the reading of the lawsuit by the plaintiff. After reading the lawsuit, the Chief Judge asked the plaintiff whether or not there was a change in the lawsuit. Usually in the first trial, the defendant does not make an answer first, such an attitude is carried out while

waiting for whether the plaintiff makes changes to the lawsuit or not, or instead revokes the lawsuit.

c. Defendant's Answer

In the second trial, the defendant's turn to provide answers, which contained confessions, rebuttal, rebuttal and confession in this case the defendant did not refute but also did not justify (*referte*) on the plaintiff's lawsuit. In general, the defendant's response contained 1) regarding exceptions, 2) concerning the subject matter (*fundamentum petendi*), 3) regarding counter-claims (*reconstruction*), 4) regarding petition (*petitum*).

d. Claimant Response (*replica*)

The response of the plaintiff (*replica*), is a response back or reply to the response of the defendant either in the *exception*, in the subject matter, in the *reconstruction*, or in the claim.

e. Defendant's Response (*duplicate*)

The Defendant's response (*duplicate*) is the second chance for the defendant to submit answers to replies (replies) from the plaintiff.

f. Proof

After each party submits a lawsuit, answers, replicas and duplicates which are usually referred to in the trial process as the answering event, are declared complete, then the next turn of the trial process is verification, ie each party submits the evidence in the form of letters, witnesses, suspicions, confessions and oath [29], in order to support the arguments that have been submitted in the answer event.

g. Conclusion

After a balanced verification process is completed by the parties and no other evidence will be submitted again either in the form of letters or witnesses or expert witnesses, then each party presents its conclusions from the results during the trial process takes place. Basically this conclusion was made by the parties in accordance with their interests so that it is always said in the trial process by the panel of judges that the conclusion is not mandatory means that the parties may submit conclusions or may not submit conclusions.

h. Decision Making

The final proceeding is that it is time for the panel of judges to make a decision on all the arguments and evidence presented by the parties in the previous trial process. In the trial process in the final examination of a case in the District Court, a judge takes a decision by the judge that contains the dispute settlement [30].

i. Legal effort

Legal remedies that apply to the Industrial Relations Court as legal remedies that apply to civil procedural law, but in legal proceedings in industrial relations disputes do not recognize the existence of appeals but directly appeal to the Supreme Court for disputes over rights and termination disputes.

j. Implementation of Decisions

If all legal remedies have been carried out by the parties and the decision has permanent legal force but one of the parties does not want to carry out the said decision, the party who feels it is desirable to submit an application for the decision to the Industrial Relations Court, in particular a condemnatorial decision or a convicting decision of one party. The execution of the decision issued is called execution.

D. CONCLUSIONS

Settlement of industrial relations disputes can be done through resolutions outside the Industrial Relations Court (Non-Litigation) and in the Industrial Relations Court (Litigation). In addition, Implementation of Article 87 of Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes, in the Decision of the Supreme Court of the Republic of Indonesia Number 933K/PDT.SUS/2009 dated May 5, 2010 and Number 488K/PDT.SUS/2012 dated October 22, 2012, referred to as trade unions / labor unions has a *legal standing* representing its members proceeding in the Industrial Relations Court is a trade union/labor union both inside and outside the company while in the Supreme Court Decree of the Republic of Indonesia Number 014K/ PDT.SUS/2010 dated 3 February 2010 and Number 819K/PDT SUS/2011 dated 7 March 2012 is a trade union/labor union/labor union which already has a base or base at the company where the worker works. Settlement of industrial relations disputes can be carried out through settlements outside the Industrial Relations Court (Non-litigation), it will be more effective if it is carried out directly between employers and their workers, without interference from other parties as well as in Article 87 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes need further implementation regulations.

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