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Legal Reform of Mediation Towards Fair Industrial Conflict Resolution

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Abstract

Legal reform of mediation in the resolution of industrial conflicts is a crucial concern given the increasing complexity of disputes between workers and employers. The mediation process, which is expected to serve as an effective and fair middle ground, often encounters obstacles due to regulatory weaknesses and the lack of understanding and trust from the parties involved. This research aims to evaluate the effectiveness of the current legal framework for mediation and propose solutions for improvements in order to achieve more equitable conflict resolution. This study employs qualitative methods with both normative and empirical approaches. Data is collected through literature reviews, legal analysis, and interviews with relevant stakeholders such as mediators, employers, and workers. The research findings indicate that although mediation has significant potential in resolving industrial conflicts, weaknesses in implementation and regulatory oversight often render this process suboptimal. Therefore, legal reform is necessary, encompassing the enhancement of mediator capacities, the revision of regulations pertaining to the rights and obligations of the parties, and the strengthening of monitoring and evaluation mechanisms. This reform is expected to improve public trust in mediation and create fair and equitable resolutions for all parties.

Keywords: mediation, industrial conflict, legal reform

INTRODUCTION

Disputes or conflicts in human relationships are an unavoidable phenomenon, especially when involving various legal subjects, including a diverse array of legal entities (Artadi, 2021). In the context of a complex society, the occurrence of disputes widens, with industrial relations disputes being one of the most frequently discussed issues. These disputes generally occur between workers or laborers and employers or managers, as well as between labor organizations and corporate entities (Yunus et al., 2024). In this situation, finding an objective and fair solution to disputes becomes very important. Dispute resolution can essentially be undertaken by the parties involved. However, when they are unable to resolve issues independently, the presence of a third party, whether from the state or elsewhere, becomes highly necessary. In modern society, the court system serves as the official forum provided by the state for resolving disputes. However, a question arises as to how suitable this judicial institution is for handling disputes in industrial relations. Before the existence of formal judicial systems, indigenous societies had traditional approaches for dispute resolution, with elders playing the role of mediators (Abbas, 2017). Therefore, the presence of mediators or peacemakers is not a new concept in dispute resolution in Indonesia (Izzuddin et al., 2022).

Along with the development of the times, the need to resolve industrial relations disputes has undergone normative changes. Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes was enacted to replace Law No. 22 of 1957 and Law No. 12 of 1964, which are considered irrelevant to current conditions (Sitinjak & Ediwarman, 2014). Amidst the increasing complexity of industrial relations disputes as a result of industrialization, there is a need for a speedy, precise, fair, and cost-effective dispute resolution mechanism. With the existence of this Law, it is hoped that harmonious, dynamic, and equitable industrial relations can be realized, in line with the values of Pancasila (Mantili, 2021). Within this legal framework, the Industrial Relations Court (PHI) has been established to handle these disputes, although the role of mediators remains crucial (Simanjuntak, 2018).

Disputes between workers/laborers and employers can arise when one party seeks a specific action from the other party, but that party refuses. In industrial relations, this tension generally involves the interests of workers, employers, and the government. These three parties are essential pillars for the success of labor laws and the resolution of industrial relations disputes. In this regard, workers and employers are bound by employment agreements or collective labor agreements, which should create interdependence for the continuity of the company's operations. If one party feels dissatisfied, this situation can trigger conflict, which is often marked by complaints, demonstrations, or strikes from the workers, while employers may respond with actions such as layoffs or workforce reductions (Muin, 2022).

Layoffs are one of the most common forms of disputes that arise and can have serious implications for workers, especially since they do not always have easy access to finding new jobs (Aisyah, 2020). Many reports indicate that companies sometimes implement policies that disadvantage workers, such as management rationalization leading to mass layoffs without fulfilling their obligations to provide workers' rights, such as appropriate severance pay. Additionally, many workers in Indonesia find themselves in economically vulnerable positions, often with wages insufficient for their living needs, prompting some to seek employment abroad despite inherent risks. In this context, adequate legal protection becomes essential for achieving a balance of rights and obligations between employers and workers (Sinaga & Zaluchu, 2021).

The economic liberalization affecting the world, including Indonesia, has led to complex impacts. On one hand, liberalization may stimulate economic growth, while on the other hand, it can exacerbate conditions for more vulnerable economic groups (Juliswara & Muryanto, 2022). Workers, especially those without skills, often feel weak in terms of legal protection, even though laws like Law No. 13 of 2003 concerning Manpower have been enacted. Similarly, Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes, despite being designed to provide quick, fair, and affordable solutions, still faces challenges in practice. Issues in formal law faced by the PHI often refer to lengthy and complicated procedures, resembling the general court system, which can hinder access to justice for workers. To ensure that workers are not harmed during the development process, concrete measures must be taken to improve the legal order governing industrial relations (Am, 2024).

The formal and material legal issues in the context of resolving industrial relations disputes in Indonesia are two interconnected yet distinct aspects. Formal law refers to the procedures and mechanisms that must be followed within the judicial system, while material law encompasses the substance of the laws themselves, including the rights and obligations held by each party. In resolving industrial relations disputes, both aspects play crucial roles that can affect justice and the effectiveness of the resolution process (Muhtar et al., 2023).

Formal law includes the rules and procedures governing how a case is processed within the judicial system. In the context of the Industrial Relations Court (PHI), the applicable procedural law often derives from general procedural law, known for its complicated and lengthy nature (Siahaan, 2022). The processes followed in court often take months or even

years, resulting in frustration and dissatisfaction among workers pursuing disputes. Lengthy procedures can also lead to additional costs, such as transportation costs to court, which are typically found in major cities, along with other legal costs. Many workers cannot afford these expenses, leading them to forgo their rights to justice.

The challenges posed by formal law become even more pronounced when considering the helplessness of many workers in facing a complex system. They often lack adequate understanding of legal procedures and do not have access to competent legal advisors. This makes them vulnerable to unjust decisions that often result in outcomes at odds with their expectations. Hence, to achieve a fair and efficient resolution in industrial relations disputes, there is a need for reform in the formal law governing the procedures in the PHI, making it simpler and more accessible for workers (Manurung & Adab, 2023).

Material law governs the rights and obligations in worker-employer relationships. Despite labor regulations like Law No. 13 of 2003 on Manpower, many workers, especially in informal sectors, face inadequate protection and feel unjustly treated (Shalihah, 2017). This situation is exacerbated by the fact that many employers, especially in small and medium-sized enterprises, often disregard existing laws. They may fail to pay wages in accordance with regulations, or not provide adequate severance pay when terminating employment. Furthermore, the commonly practiced outsourcing by companies adds to the complexity of these material legal issues, where workers may lose their rights due to being employed by third parties without adequate protection.

RESEARCH METHOD

In research focusing on the reform of mediation law in industrial conflict resolution, the normative juridical method serves as the primary approach utilized (Warjiyati, 2018). This method aims to analyze the legislation governing dispute resolution in the field of employment, particularly Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes. The study will explore various relevant legal aspects, including regulations governing the rights and obligations of workers and employers, as well as the applicable mediation procedures. Through this approach, the research can evaluate the effectiveness of existing regulations and identify weaknesses and gaps that may exist in their implementation. The results of this analysis are expected to provide recommendations for improvements and legal reform that better meet the current societal needs.

Additionally, both legislative and conceptual approaches will be employed to strengthen the analysis in this study. The legislative approach will involve examining various laws, government regulations, and other related policies addressing industrial conflict resolution and mediation (Sudewo, 2021). This is essential to understand the legal framework underpinning mediation practices in Indonesia. Meanwhile, the conceptual approach will be used to explore relevant thoughts and theories regarding mediation as a dispute resolution method, as well as the concept of justice and satisfaction of the parties involved in the mediation process. By combining these two approaches, this research will offer a comprehensive overview of the challenges and opportunities in resolving industrial conflicts through mediation, as well as the contributions that legal reform can make in creating fairer resolutions for all parties involved.

RESULT AND DISCUSSION

Regulation on Industrial Relations Dispute Settlement through Mediation

The resolution of disputes in industrial relations is crucial for maintaining the balance between workers and employers. A harmonious industrial relationship not only creates a peaceful work environment but also contributes to increased productivity and the well-being of workers. [7]. The analysis of the regulation of the settlement of industrial relations disputes through mediation, in accordance with Law No. 2 of 2004, needs to be viewed from several

important aspects, including institutional aspects and procedural aspects of settlement. The institutional aspect of resolving industrial relations disputes includes the structure and role of institutions involved in the mediation process. Law No. 2 of 2004 establishes the presence of mediators who function as neutral third parties in resolving disputes between workers and employers. These mediators are expected to possess certain qualifications, including a deep understanding of labor issues and the ability to act objectively without bias toward either party. The presence of competent and authorized mediators is crucial in establishing trust among the disputing parties so that the mediation process can proceed effectively and result in a fair agreement.

On the other hand, the procedural aspects of resolution relate to the steps taken in the mediation process itself. This process usually begins with efforts to resolve the issue outside of court, where the mediator attempts to assist both parties in finding common ground. If an agreement is not reached, the procedure will continue to the next stage, which is the industrial relations court. In this case, it is important to have a clear and structured procedure so that each party understands the steps that must be taken as well as their rights and obligations in the dispute resolution process. A well-defined procedure can not only reduce tensions between the disputing parties but also ensure that every decision made during the mediation process is fair and in accordance with applicable regulations.

Regarding the regulation of mediation from the perspective of the institutions authorized to resolve industrial relations disputes, it can be explained as follows. The process of resolving industrial relations disputes through mediation is a subsequent step after bipartite resolution efforts have failed and when the parties do not choose to use conciliation or arbitration institutions. In this situation, they may opt to settle the dispute through mediation. According to Article 1, Item 11 of Law No. 2 of 2004, this resolution includes disputes over rights, interest disputes, termination of employment, as well as disputes among trade unions within one company, conducted through discussions facilitated by one or more neutral mediators. Thus, all types of disputes in the context of industrial relations can be resolved through the mediation process.

Mediators, in accordance with the provisions of Article 9 of Law No. 2 of 2004, are required to meet several qualifications. However, upon further examination, Article 9 of this law does not provide a detailed description of the qualifications that must be met to be appointed as mediators in industrial relations resolution. This can be understood considering that the provisions of Article 9 letter g mention the existence of other requirements that will be established by the minister. In addition, Article 16 of Law No. 2 of 2004 also mandates that provisions related to the procedures for the appointment and termination of mediators, as well as the mediation process, will be regulated by ministerial decision. As an implementation of Article 9 letter g and Article 16, the Minister of Manpower Decision No. Kep/92/VI/2004 was issued regarding the Appointment and Termination of Mediators and Mediation Procedures (hereinafter referred to as Kepmenaker No. Kep 92/VI/2004).

Article 3 of Kepmenaker No. Kep/92/VI/2004 regulates the qualifications that must be met by individuals who wish to become mediators in the resolution of industrial relations disputes. Several established criteria are essential to ensure that mediators have the quality and competence needed to perform their duties. Firstly, the main requirement is that the mediator must be a Civil Servant (PNS) working in an agency responsible for labor affairs. This indicates that mediators must have a deep understanding of policies and regulations governing labor in Indonesia. Additionally, mediators are also expected to have faith and devotion to God Almighty, reflecting high moral and ethical values in carrying out their duties.

The next requirement includes nationality, where the mediator must be an Indonesian citizen. This is important for the mediator to understand the social, cultural, and legal context in Indonesia. Additionally, prospective mediators must also be in good health, which is

evidenced by a medical certificate, to ensure that they are in good physical condition while performing their duties. Mediators are also required to master legislation in the labor field. This knowledge is crucial for mediators to provide appropriate advice and help resolve disputes fairly. Furthermore, mediators are expected to possess qualities such as authority, honesty, fairness, and impeccable behavior. All of these traits are significant in maintaining the integrity and trust of the parties involved in the mediation process. Lastly, prospective mediators must have at least a Bachelor's degree and obtain legitimacy from the Minister of Manpower and Transmigration. This educational requirement underscores the importance of formal education in preparing individuals to handle complex issues in industrial relations.

The provisions in Article 4 of Kepmenaker No. Kep/92/VI/2004 outline the procedure for obtaining legitimacy as a mediator in the resolution of industrial relations disputes. This process begins with the proposal of mediator candidates from various levels of agencies responsible for labor affairs. Firstly, for mediator candidates who will serve at the Ministry of Manpower and Transmigration level, the proposal is made by the Director General of Industrial Relations Development. This proposal process indicates that there is a clear and formal mechanism for appointing mediators at the central level, ensuring that selected individuals have the qualifications and capabilities to handle labor issues at the national level.

Secondly, for candidates at the provincial level, proposals are submitted by the Governor. This reflects the important role of local government in ensuring that the mediators appointed in the province have a good understanding of local labor conditions and are capable of resolving conflicts that may arise between workers and employers. The Governor's decision in this case reaffirms the local government's responsibility to maintain harmonious industrial relations in its region. Lastly, for mediator candidates at the district or city level, proposals are made by the Regent or Mayor. This process indicates the importance of local government involvement in addressing industrial relations disputes at a more localized level. By involving local leaders, it is hoped that appointed mediators can better understand the social and economic dynamics in the area, thus functioning more effectively in resolving disputes.

The provisions regarding mediators that have been explained show that, from an institutional perspective, only mediators who are Civil Servants (PNS) in government agencies responsible for labor affairs are authorized to resolve industrial relations disputes through mediation. This means that no other mediators are permitted, except for PNS who have been certified as mediators by the Minister of Manpower. There is a risk that PNS mediators may not act neutrally. This is because PNS mediators coming from the Labor Office have hierarchical positions, so if a superior intervenes to favor one of the disputing parties, this situation may affect the objectivity of the mediator. If the intervening official is the one who proposed the mediator, it can create discomfort for the mediator in carrying out their duties. Thus, the provision in Article 1, Item 11 of Law No. 2 of 2004, which states that "industrial relations mediation is conducted through negotiations mediated by one or more neutral mediators," becomes difficult to realize.

The authority of mediators is regulated in Article 9 of Kepmenakertrans No. Kep-92/Men/VI/2004, which includes several things, among others: a) Inviting the disputing parties to negotiate in good faith before proceeding to the mediation process; b) Requesting information, documents, and letters related to the dispute; c) Presenting witnesses or expert witnesses in mediation if necessary; d) Opening books and requesting letters from relevant agencies or institutions as needed; e) Accepting or rejecting representatives of the disputing parties if they do not have power of attorney. However, this authority can be disrupted if there is intervention from superiors based on hierarchical positions.

There is an inconsistency in the provisions of Article 8 of Law No. 2 of 2004, which contradicts Article 27 paragraph (2) and Article 28 paragraph (2) of the 1945 Constitution. Both articles emphasize the principle of equality of rights. However, the requirements to

become mediators established in Article 8 and Article 9 of Law No. 2 of 2004 tend to be discriminatory, because they only allow mediators in the context of industrial relations to come from PNS in labor agencies, unlike mediators in broader civil case resolutions. Thirdly, the provisions regarding mediators in Law No. 2 of 2004 reflect government intervention in industrial relations [8]. Regarding the regulation of mediation in terms of procedures or stages, the resolution of disputes through mediation is conducted by mediators located in every office of the agency responsible for labor affairs at the district/city level. After receiving the assignment for dispute resolution, the mediator is required to conduct an investigation into the substance of the case within a maximum of 7 (seven) working days and to promptly hold a mediation session.

The mechanism for resolving industrial relations disputes through mediation is outlined as follows:

1. The mediation process must be conducted within a maximum of 30 (thirty) working days from the time the mediator receives the assignment for dispute resolution.
2. If an agreement is reached during the mediation session, a Joint Agreement will be created, signed by all relevant parties and witnessed by the mediator, which will then be registered at the Industrial Relations Court in the local District Court.
3. If the mediation does not result in an agreement, the mediator will prepare a written recommendation. Furthermore, the mediator is required to issue this written recommendation no later than 10 (ten) days after the mediation session is conducted.

The parties involved in the dispute are required to provide a written response or answer to the mediator's recommendation within a maximum of 10 (ten) days after receiving the recommendation. If the disputing parties do not provide a written response or answer, it will be considered a rejection of the mediator's recommendation. If the disputing parties accept the mediator's recommendation, they must draft a joint agreement within a maximum of 3 (three) days, and this agreement must subsequently be registered at the Industrial Relations Court in the local District Court to obtain a registration certificate. If an agreement is not reached or if the parties reject the mediator’s recommendation, either party has the right to continue the dispute resolution process by filing a lawsuit with the Industrial Relations Court in the District Court according to the jurisdiction where the worker or laborer is employed.

Legal Reforms Needed to Enhance Justice and Effectiveness of the Mediation Process in Resolving Disputes Between Workers and Employers in Indonesia

The mediation procedures regulated under Law No. 2 of 2004 and its implementing regulations can indeed be applied in the context of mediation by independent-type mediators. As stated by Galanter, the existence of alternative courts does not necessarily have to be realized in a physical form, but can also be manifested through the processes that occur between the disputing parties [9]. This means that if both parties agree to apply a method different from that established by law, as long as the method does not contradict existing regulations, they have the freedom to submit the mediation procedure to a mediator who is not a civil servant from the Department of Labor. This requires the agreement of both parties involved in the dispute.

Although conflict resolution is assisted by a mediator, it is important to note that the mediator must adhere to the principle of deliberation to reach consensus. This approach allows room for all parties to actively engage in the resolution process, so the outcomes achieved are not merely unilateral decisions, but rather mutual agreements that are generated through discussion and careful consideration. In this context, the role of the mediator becomes crucial to ensure that dialogue proceeds well and that all voices are heard, so that each party feels valued and involved in the process. Furthermore, a more flexible arrangement in this mediation procedure can provide distinct advantages, especially in situations where the relationship between workers and employers is crucial to maintain.

The weaknesses in the legal framework of mediation in industrial dispute resolution in Indonesia need to be addressed to understand the existing constraints in its implementation, particularly concerning Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes. While this law has been designed to provide a better legal framework for resolving conflicts between workers and employers, several issues still arise that hinder the effectiveness of the mediation process. One major weakness of this regulation is the lack of clarity and consistency in mediation procedures. Although the law outlines mediation steps, practices in the field often do not align with the existing provisions. This can lead to confusion and uncertainty for the parties involved, ultimately diminishing trust in the mediation process itself.

The complexity of mediation procedures is a significant inhibiting factor. The mediation process regulated by Law No. 2 of 2004 requires parties to follow detailed stages, starting from initial mediation to the formation of a mediator, and continuing to the process in the Industrial Relations Court (PHI) if mediation fails. This series of steps often takes considerable time, during which parties may have to wait several weeks or even months to obtain a mediation schedule. This prolonged duration not only adds psychological burdens on workers who may face economic pressure due to the dispute but also creates the potential for greater conflict between the parties. In this context, the complicated procedures and long waiting times could lead to dissatisfaction and lost opportunities to reach a fair agreement.

Another weakness that needs to be noted is the lack of knowledge and understanding about the mediation process among workers and employers. Many parties involved in mediation do not have sufficient understanding of their rights and obligations, as well as the existing mechanisms for dispute resolution. This makes them less capable of participating effectively in the mediation process. Additionally, the imbalance in bargaining positions between workers and employers often puts pressure on workers to accept unfair agreements, ultimately undermining the primary objective of mediation as a fair dispute resolution method. These weaknesses demand a need for deeper reforms that address not only legal aspects but also enhance the capacity and awareness of all parties involved in the mediation process. By understanding and addressing these weaknesses, it is hoped that the mediation process in industrial conflict resolution can become more effective and yield fair results for all parties involved.

One important step in the legal reform of mediation is improving the capacity and quality of mediators. Competent and trained mediators are essential for achieving fair and effective mediation outcomes in the resolution of industrial disputes. Therefore, training and certification for mediators should be a priority. This training should encompass various aspects, such as mediation techniques, understanding of labor law, and interpersonal skills necessary for handling conflicts. With certification, mediators will have official recognition that guarantees their competence in performing their role as facilitators of dispute resolution. This will not only enhance the credibility of mediators but also strengthen parties' trust in the mediation process.

Moreover, the development of ethical standards and professionalism for mediators is also crucial. These standards will provide guidelines for mediators in carrying out their duties, including in terms of neutrality, fairness, and transparency during the mediation process. Mediators who comply with ethical standards will be better able to maintain good relationships between the parties and create a conducive environment for dialogue. By ensuring that mediators perform their roles professionally, it is hoped that the mediation process can proceed more smoothly and result in more satisfactory agreements for all parties.

A revision of existing regulations is urgently needed to clarify the rights and obligations of the parties involved in the mediation process. This regulatory update should detail the rights of workers and employers in the context of industrial dispute resolution, including the right to protection during the mediation process. This will ensure that both parties have a common understanding of what to expect during the process. Reinforcing the protection of workers'

rights, especially in the context of termination of employment (PHK), is also very important. In many cases, workers feel pressured and lack the power to advocate for their rights. Therefore, strong regulations that protect workers' rights will provide assurances that they will not be disadvantaged in the mediation process and will ensure fairness in the resolution of disputes.

Strengthening monitoring and evaluation mechanisms is also an important step in legal reforms for mediation. The development of an effective monitoring system for the mediation process will allow authorities to assess how mediation is carried out, including mediator involvement, fairness in the process, and the outcomes achieved. With a good monitoring system in place, the collected data can be used to evaluate the impact of mediation on industrial relations as a whole. Evaluating mediation outcomes will provide valuable insights into the effectiveness of the process and whether improvements are needed. If mediation results can be measured and adequately evaluated, it will provide a strong basis for making adjustments to regulations and mediation practices in the future.

Outreach and legal awareness-raising among workers and employers are also integral to reform efforts. Strategies for enhancing understanding of the mediation process and the rights held are crucial to ensure that all parties are well-informed. Education and training for workers regarding their rights in the context of mediation will empower them to actively participate in the process. Additionally, labor organizations and employer associations can play an important role in supporting the dissemination of this information. They can organize seminars, workshops, and information campaigns to raise awareness of the importance of mediation as an alternative dispute resolution method. In this way, it is hoped that the parties will feel more confident in utilizing the mediation process and committing to reaching mutually beneficial solutions.

In today’s digital era, the implementation of technology in the mediation process is highly relevant and necessary. The use of digital platforms can accelerate and simplify the mediation process, especially in situations where parties find it difficult to meet physically. These platforms can provide a safe and structured space for discussion, allowing mediators to conduct mediation sessions efficiently. Additionally, technology can also be used to record mediation outcomes and store documents digitally, facilitating information access for all parties. Technological innovations, such as communication applications and conflict management software, can promote better communication between parties, enabling them to negotiate more effectively. By integrating technology into the mediation process, it is expected that there will be improvements in efficiency and effectiveness in resolving industrial disputes, as well as creating a more positive experience for all involved.

CONCLUSION

Legal reform in mediation for industrial dispute resolution in Indonesia plays a crucial role in creating justice and effectiveness for all parties involved, particularly workers and employers. Through the improvement of mediator capacity and quality, the strengthening of regulations pertaining to rights and obligations, and the development of effective monitoring and evaluation mechanisms, it is hoped that the mediation process can become more transparent and fair. The involvement of labor organizations and employer associations in outreach and legal awareness efforts is also a strategic step required to enhance all parties' understanding of the mediation process, enabling them to participate actively and informatively in dispute resolution efforts.

Furthermore, the implementation of technology in the mediation process has become highly relevant in this digital age, facilitating communication and easing access to information for the parties involved. By integrating technology into the mediation process, the efficiency and effectiveness of industrial conflict resolution are expected to improve, which in turn can

help create more harmonious and equitable industrial relations. Therefore, comprehensive and sustainable reform measures are essential to ensure that mediation becomes a reliable alternative dispute resolution method that provides fair outcomes for all parties involved.

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