

Mechanism for Preventing Industrial Relations Disputes



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ABSTRACT

Labour issues in this era were not yet widely exposed, but that doesn't mean there were no problems. This situation was primarily due to the government's focus on political and constitutional stability, specifically efforts to maintain independence at that time. The data used to answer the problem is obtained using a legal approach and a case approach. The data collected consists of interview results from relevant parties, cases that have been decided by the court, and regulations that govern problem resolution. This data is then analysed in depth to find solutions to the existing problems. Based on the research findings, it is explained that Indonesians respect and uphold every outcome of deliberation, therefore all parties involved must accept and implement it in good faith and with a sense of responsibility.

1. Introduction

The tripartite legal provisions, which have served as the basis for the tripartite cooperation that has existed between workers/laborers, employers, and the government, are examined and analysed in this chapter (Quinn, 2003). This first problem utilises the Theory of the Rule of Law as an analytical tool to address the research focus, resulting in an analysis and study of the rule of law as the theoretical foundation used. Tripartite, as a system, is a mechanism for resolving grievances or disputes between employers and workers in a company that cannot be resolved bilaterally, and are then resolved through the mediation services of a

mediator, conciliator, or arbitrator appointed by law. The implementation of the tripartite system will discuss the mechanisms employed by workers/labor and employers to prevent the emergence of industrial relations disputes (Ismanto et al., 2022). As for the process, it includes negotiation, consultation, and consensus.

2. Methodology

This research was conducted based on the numerous problems between entrepreneurs, the government, and employees. The data used to address the problem is collected using a legal approach and a case study approach. The data collected consists of interview results from relevant parties, cases that have been decided by

the court, and regulations that govern problem resolution. This data is then analysed in depth to find solutions to the existing problems.

3. Result and Discussion

3.1 Mechanism for Preventing Industrial Relations Disputes

1. Negotiation

The term "negotiation" means the process, method, or act of discussing or negotiating; talking about something; deliberation and consultation (Goldman & Rojot, 2002). Meanwhile, there are several interpretations of the term "negotiation" found in Indonesian literature, namely:

- 1) The process of bargaining through negotiation to reach a mutual agreement between one party (group or organisation) and another party (group or organisation); the peaceful resolution of disputes through negotiation between the disputing parties;
- 2) Negotiation is defined as the process of bargaining through discussion between disputing parties to reach a mutual agreement;
- 3) In everyday language, negotiation is equivalent to the terms "negotiating," "consulting," or "reaching an agreement." In English, "negotiation" means bargaining. As for the person conducting the negotiation, they are called the negotiator.

Negotiation is a structured communication process where conflicting parties interact directly to reach an agreement that satisfies all parties (Goldman & Rojot, 2002). This process involves presenting each party's interests and positions, finding common ground that is mutually acceptable, and requires skills in persuasion, compromise, and decision-making. The effectiveness of negotiation in conflict management heavily relies on the ability of the parties involved to actively listen, show empathy,

and collaboratively solve problems (Zaripour, 2024).

Thus, the term "negotiation" can be understood as synonymous with "negotiation." Furthermore, it can be said that conducting negotiations is carried out through negotiation between the parties involved (Zartman, 2008). ILO Convention No. 98, the Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, defines collective bargaining as "voluntary negotiation between employers or employers' organisations and workers' organisations, with the object of reaching an agreement on terms and conditions of employment through mutual consent." Further elaborating on collective bargaining, the ILO provides an even broader definition, namely:(Gernigon et al., 2000)

- 1) For the purposes of this Recommendation, the term "Joint Agreement" means any written agreement concerning working conditions and terms of employment reached between an employer, a group of employers, or one or more employers' organisations on the one hand, and one or more representatives of workers' organisations, or, in the absence of such organisations, representatives of the workers duly elected and authorised in accordance with national laws and regulations, on the other hand;
- 2) Nothing in the existing definitions can be interpreted as recognition of an association established, dominated, or financed by entrepreneurs or their representatives.

Collective bargaining can occur at various different levels, including national, sectoral, local, and workplace levels (Doellgast & Benassi, 2020). Joint negotiations also intersect with the theory of collective bargaining, which, according to Neil W. Chamberlain and James W. Kuhn, initially aimed solely at protection but was later expanded to

include the goal of participation. The principle of collective bargaining is the right to negotiate and consult through the respective representatives of workers/employees and employers. The term "collective bargaining" is used to describe the negotiation process between workers/employees and employers, as well as their representatives, regarding any issue related to working conditions or other matters of mutual interest to workers/employees (Bodilenyane, 2017).

Collective bargaining is not just the signing of an agreement mutually acceptable to both parties. It is also not merely a meeting of minds between two conflicting parties at the negotiating table. Collective bargaining is not just a discussion about grievances, wage issues, seniority arrangements, and so on. However, collective bargaining is the democratic joint formulation of "work rules" and "working conditions" regarding all matters that directly impact workers in the workplace (Gyesie, 2017). Thus, the principles of collective bargaining grant workers/laborers and employers the right to discuss matters related to the employment relationship, which tends to prevent disputes from arising.

2. Consultation

In ILO instruments, the scope of consultation is usually broader than the scope of collective bargaining. Consultation covers matters of common interest to workers and employers and allows for their joint examination with the aim of identifying, as far as possible, mutually agreed-upon and appropriate solutions, and enables public authorities to receive the opinions, advice, and assistance of employers' and workers' organisations on the formulation and implementation of legislation concerning matters of interest to them, such as the establishment of national bodies, and the formulation and implementation of economic and social development plans.

Consultation is also a derivative of social

dialogue, which the ILO defines as all types of negotiation, consultation, or simply the exchange of information with, or between, government, employer, and worker representatives on matters of common interest related to economic and social policy. In a smaller context, consultation takes place at the company level, specifically on a bipartite basis involving only workers/labor and employers. Bipartite consultation is necessary in this case to prevent disputes from arising early. Bipartite consultation is not only for preventing or anticipating problems; many other aspects, including efforts to increase productivity and worker/labor participation in the company, can be discussed on a bipartite basis. Therefore, the function of bipartite consultation can encompass a wide range of issues within the broader company.

In Indonesia, consultations at a broader level are conducted regularly and consistently within an institutionalised framework. These tripartite consultations are generally held at the national, provincial, and district levels. This consultation can also take place at the sectoral level and in several institutions, such as the Wage Council, the Manpower Council, the Occupational Health and Safety Council, the Training Council, the Productivity Council, and dispute resolution in the Industrial Relations Court. Consultation in this context is not merely information, nor is it about making joint decisions or negotiation; rather, it emphasises providing input to the government in response to various international standards (Bradley, 2011). Therefore, the elements involved in the consultation do not strictly reflect the elements of workers, employers, and the government. The form of consultation can be described as follows:

- 1) Social Dialogue of the Tripartite LKS at the National Level

The most important tripartite social dialogue body in Indonesia is the Tripartite Cooperation Institution (LKS Tripartit). LKS Tripartit generally serves as a forum for

exchanging information about policies and plans, or more accurately, for joint consultation. The LKS consists of 45 representatives from labour unions, employer associations, and the government (with an equal number from each). Additionally, the advice and considerations from the National Wage Council are submitted to the Central Government in formulating wage policies and developing the national wage system.

2) Social Dialogue of the Tripartite LKS at the Decentralised Level

Since 2000, with the implementation of the Regional Autonomy Law, the functions of the Manpower Service have been incorporated into the provincial and district government structures. The structure of the tripartite LKS dialogue is not uniform across all provinces and districts, considering this depends on the needs of each local government. However, in most cases, there are three tripartite bodies: the general tripartite body, the wage board, and the occupational health and safety board.

3) Social Dialogue of Bipartite LKS at the Company Level

Social dialogue at the company level is realised through a bipartite committee (LKS Bipartit) formed by worker organisations and employer associations. This bipartisan committee is the first step in initiating negotiations for the draughting of a Collective Bargaining Agreement (CBA). According to the law, every company that employs at least 50 workers must form a bipartite committee. Although there is no national data on the number of LKS formed, mapping in Siak and Pelalawan clearly shows that in practice, the number of LKS in those areas is relatively low.

The leading government agency involved in social dialogue is the Ministry of Manpower (Ratnam & Tomoda, 2005). This ministry is

organised and actively operating at the city/district and provincial levels. In general, the main responsibility of this ministry is to ensure the welfare of workers in Indonesia. This ministry is also responsible for labour laws that give rise to a number of implementing regulations on industrial relations and other derivative regulations. Consultation in this context is also one of the specific roles of the Ministry of Manpower, namely that of a regulator. This means issuing regulations, including ministerial regulations, after consulting with relevant parties, especially representatives of workers/laborers and employer associations.

3. Consensus

Deliberation is a way to solve a problem. In deliberation, everyone who participates has an equal opportunity to express their interests. The core of deliberation is tolerance, so every individual and group will respect the opinions of others. For those individuals and groups, there is no imposition of will on other individuals and groups, even if those groups are in the majority. In his speech on May 29, 1945, during discussions about the foundation of the state, Moh. Yamin stated that there was only one foundation: *perikarakyatan* (people's welfare). Deliberation becomes a strength because it opens up opportunities for stakeholders, increases the responsibility of citizens, and creates obligations that are not binding on the heart (Kahane et al., 2013). Based on deliberation, humans refine their struggle and work on the path of divinity by opening their minds in consultation with fellow human beings. According to Indonesian civilisation, deliberation and representation are under the guidance of wisdom and deliberation, or gathering in a session.

This refers to the essence of deliberation, which involves the people in draughting and implementing the state, as has been done by the Republic of Indonesia. Although citizenship aligns with democracy, Pancasila emphasises citizenship

guided by wisdom and discretion. Democracy that not only prioritises individual citizen involvement, but with wisdom and prudence, there is guidance related to truth that is beneficial for the common good. Wisdom in the fourth principle of Pancasila is wisdom that originates from the first principle, wisdom that originates from God. This means that the people must base themselves on the guidance of the Almighty God.

The value of democracy in the fourth principle, on the one hand, requires the involvement of the people in national life, including in the development of national legal science, but on the other hand, it also requires that legal development be carried out with wisdom and prudence that does not negate the values of divinity and humanity. Consultation to reach consensus is a classic culture that has existed in Indonesian society since ancient times (Anggita & Hatori, 2020). We know that there are ways for societies to solve their problems that rely on Oriental characteristics, such as prioritising deliberation, like:

- i. In Banjar society, the custom of "badamai" (making peace) is known;
- ii. In Dayak society, it is known as the customary council (damang and its letadat);
- iii. In Acehese society, conflict resolution patterns are known as di'iet, sayam, suloh, and pemat jaroe;
- iv. In Maluku society, the Saniri Council and the Raja are known;
- v. In North Lombok society, the Wet Tu Telu custom is known, along with its begundem;
- vi. In the Lamaholot indigenous community (Flores NTT), the custom of mela sareka is known;
- vii. In Javanese society, it is known as Rembugan;
- viii. In Batak Karo society, the term "Rungkun" is known;
- ix. In West Java, it is known as Badami.

All these customs show a similarity in form, which is the willingness to prioritise deliberation as a process for resolving conflict (Deveaux, 2003). Upon examination, the essence of the culture of deliberation and consensus lies within the values contained in the 4th principle of Pancasila, "People's Sovereignty Guided by Wisdom and Deliberation," which also permeates the Indonesian industrial relations model. Indonesia's industrial relations are categorised as harmonious labour relations. The harmonious labour relations pattern emphasises consensus, where every labour issue that could cause complaints, especially those leading to conflict, is sought to be resolved through deliberation and consensus.

Aloysius Uwiyono stated that conflict is always preceded by complaints. To prevent grievances from escalating into conflict, labour law provides mechanisms for resolving grievances, which are generally outlined in labour agreements or company regulations (Uzougbo et al., 2023). In the first stage, employee complaints are discussed with the union leadership to determine if the complaints are truly serious matters that need to be addressed. If the issue is considered a serious problem that needs to be addressed, the employee in question and/or the union leadership (PUK) will discuss it with the Foreman or Supervisor. If the issue is still unresolved after discussions with the Foreman/Supervisor and the union leadership, the resolution will proceed to the next higher level in the company's hierarchy, culminating with the senior official who has the authority to make decisions in the company. If a common ground is still not reached at this final stage, it indicates that these grievances are beginning to turn into labour conflicts that require their own mechanisms.

The process described above has, in principle, adopted a process of deliberation to prevent a grievance from escalating into an industrial relations conflict. In other words, it is the realisation of a tripartite relationship aimed at preventing disputes through consensus,

prioritising and implementing a mechanism of discussion among workers/laborers, employers, and the government. Within the company's internal scope, workers/laborers with grievances can directly discuss these matters together with the employer, and then a decision can be made that is satisfactory to all parties. The mechanism for preventing disputes through consensus essentially adopts the principle of deliberation for consensus.

This principle, when deliberation and consensus in local wisdom are spelled out, is not merely in formal discussions or meetings for public policy determination. The value of "deliberation and consensus" is a part of the daily lives of the people. It is real in the continuity of order and togetherness. This means that "deliberation and consensus" is not merely a verbal concept, but also a reality for a better and more beautiful future. The implementation of the 4th principle of Pancasila in the context of industrial relations, which is based on deliberation and consensus at the company level, has been established as one of the important foundations regulated in the Minister of Manpower's Decree. As for its implementation, it can be developed by:

- i. The existence of constructive dialogue that has a positive effect on the wider community, conducted between Workers/Laborers and Employers, in order to create peace in the workplace and business continuity;
- ii. The application of the family philosophy by Workers/Laborers and Employers in resolving differences of opinion during discussions on working conditions;
- iii. The good faith of the Workers/Laborers and Employers in implementing the results of the deliberation's decision;
- iv. Prioritising dialogue in resolving every problem; and
- v. Providing opportunities for Workers/Laborers to participate in the bipartite process, the establishment of

Bipartite Cooperation Institutions, the formation of Workers' Unions/Labor Unions, and the creation of Collective Labour Agreements.

4. Conclusion

This solution through deliberation to reach consensus is imbued with the spirit of family, which is a characteristic of the Indonesian people. Indonesian people respect and uphold every outcome of deliberation, therefore all parties involved must accept and implement it in good faith and with a sense of responsibility. Here, the common good is prioritised over personal and group interests. Discussions in the deliberation are conducted with common sense and in accordance with a noble conscience. Decisions made must be morally accountable to the Almighty God, uphold human dignity and values of truth and justice, prioritise unity and solidarity, and serve the common good.

References

- Anggita, C., & Hatori, T. (2020). Customary practices of Musyawarah Mufakat: an Indonesian style of consensus building. *IOP Conference Series: Earth and Environmental Science*, 589(1), 12027.
- Bodilenyane, K. (2017). *Problems and Prospects of Collective Bargaining in the Public Sector in Botswana*. University of Johannesburg (South Africa).
- Bradley, C. (2011). Consultation and legitimacy in transnational standard-setting. *Minn. J. Int'l L.*, 20, 480.
- Deveaux, M. (2003). A deliberative approach to conflicts of culture. *Political Theory*, 31(6), 780–807.
- Doellgast, V., & Benassi, C. (2020). Collective bargaining. In *Handbook of research on employee voice* (pp. 239–258). Edward Elgar Publishing.
- Gernigon, B., Odero, A., & Guido, H. (2000). ILO principles concerning collective bargaining. *Int'l Lab. Rev.*, 139, 33.
- Goldman, A., & Rojot, J. (2002). *Negotiation*.
- Gyesie, N. (2017). *Exploring the impact of collective bargaining agreements on*

- employee performance management*. Walden University.
- Ismanto, E., Alting, H., & Alauddin, R. (2022). Cooperation Institutions (LKS) Bipartite Effectiveness in Efforts to Prevent Industrial Relationship Disputes of Companies in Ternate. *Journal of Social Science*, 3(4), 756–766.
- Kahane, D., Loptson, K., Herriman, J., & Hardy, M. (2013). Stakeholder and citizen roles in public deliberation. *Journal of Deliberative Democracy*, 9(2).
- Quinn, P. (2003). *Freedom of Association and Collective Bargaining*.
- Ratnam, V., & Tomoda, S. (2005). *Practical guide for strengthening social dialogue in public service reform*. International Labour Office.
- Uzougbo, N. S., Akagha, O. V., Coker, J. O., Bakare, S. S., & Ijiga, A. C. (2023). Effective strategies for resolving labour disputes in the corporate sector: Lessons from Nigeria and the United States. *World Journal of Advanced Research and Reviews*, 3(2), 418–424.
- Zaripour, M. (2024). *Mastering the Art of Communication: Techniques for Effective Listening, Persuasion, and Conflict Resolution*. Mohammad Zaripour.
- Zartman, I. W. (2008). and Negotiation. *The SAGE Handbook of Conflict Resolution*, 322.