

Industrial Dispute Settlement in Industrial Relations Court of Banda Aceh

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ABSTRACT

Industrial relations dispute settlement is needed in dealing with industrial relations dispute, particularly, the dispute on termination of employment. The settlement is aimed to prevent both parties involved from suffering. The settlement for the dispute can be done by several measures. First, negotiation between the parties in dispute in deliberation bargaining. Next, a third party is brought into the dispute in conciliation and mediation, as a non-litigation process that can preserve the relationship between parties in dispute. Finally, taking the dispute to the industrial relation court that can be ended by agreement between both parties or court decision providing a win-lose solution. This paper examines the causes of termination of employment cases brought before the court and the settlement process. It is important to know the causes of the dispute to find a proper solution that brings justice to each party.

Keywords: *industrial dispute settlement, industrial relations court, Banda Aceh*

1. INTRODUCTION

Employers and employees, as parties in work relationships, are bound with the job contract made between them. Even though acts have been regulated, industrial disputes still happen.

However, the industrial relations dispute is not a new problem in the Province of Aceh. In fact, it has happened in the past and to date concerning work relationships for many reasons. Usually, the primary cause of industrial relations disputes is dissatisfaction (G. Kartasapoetra, 1986). It comes from both parties. For employees, the dissatisfaction usually comes from policies regulated by the employers (*ibid*) or the employers' arbitrary actions. While on the employers' side, the dissatisfaction comes from the employees' working capacity.

Solechan stated that many industrial disputes, in general, are disputes between employers and employees that are not settled well (Solechan, 2005). Solechan added that this circumstance is due to the fact that employees, whom (most of them) do not have good skills so that considered of having low moderate values, are always in the weaker position parties. Because of this reason, they are used as production tools to make a profit for the employers. (*ibid*)

Act Number 2, the Year 2004, requires parties to settle their dispute through several forms of settlements to avoid dismissals, such as bipartite mechanism, mediation, conciliation, arbitration, and industrial relations court.

The imbalance position between parties could also be obstacles in settling their disputes. It could abuse the employees, and a dispute occurs. Hikmahanto Juwana argued that labor in many occasions had demanded employers to pay them properly, saying that they are paid relatively low compared to the company's profit, other

than improved working conditions (Juwana, 2003). On the other hand, employers claim that labor is too demanding and fail to increase productivity (*ibid*).

This paper strives to find information that can address the statement of the problem, and the research questions are as follows.

1. What do the causes of employment termination cases brought before the industrial court of Banda Aceh?
2. Are the interval verdict and *akta van dading* parts of the process of industrial relations dispute settlement in industrial relations court of Banda Aceh?

2. Literature Review

The relation between parties is based on a job agreement providing rights and obligations to both parties. Failure to fulfill either party's rights can cause industrial relations disputes. Article 1 of the Act Number 2, Year 2004, defines industrial relations disputes as "a difference opinion resulting in a dispute between employers or an association of employers with workers or laborer or trade unions due to a disagreement on rights, conflicting interests, a dispute over termination of employment, or a dispute among trade unions within one company."

Another definition given by the Act is the dispute over employment termination. Article 1 Clause 4 of the Act defines it as "a dispute arising from the lack of convergence of opinions regarding the employment termination as conducted by one of the parties." This type of dispute occurs when an employer will dismiss his employee, either individually or massively. Issues concerning this dispute are whether requirements needed to dismiss or terminate employee have been fulfilled and whether payment, either salary or bonus, has been paid in a correct calculation.

G. Kartasapoetra et al. mentioned some problems that always be the causes of industrial relations disputes. The first problem is related to wages, such as the unpunctual salary payment or the below standard rate salary. The second problem is social security that happens due to the rate differences leading to unsatisfaction. The third problem is working behavior, related to the employee misunderstanding on the employer's policy to increase productivity, particularly, when the employer has to transfer the employee to another division, and the employee assumes that employer has breached the work agreement. Another problem is the working capacity that does not conform to the given assignment, also related to the increase in productivity. In this case, when an employer enforces a particular rule, it is often deemed as unfair. The last problem is personal problems, either from the employer's or employee's side, that can also be the trigger of industrial relations disputes (G. Kartasapoetra, Loc. cit, 1986).

Act Number 2, Year 2004 provides several mechanisms to settle industrial relations disputes, namely: bipartite, non-litigation, and litigation. These mechanisms are stipulated in Chapter II and IV of the Act. Chapter II provides procedures on the settlement of industrial relations disputes through bipartite and non-litigation processes, while Chapter IV focuses on the settlement of industrial relations disputes through the industrial relations court.

The first mechanism is the bipartite process. It requires industrial relations disputes to be first settled through bipartite bargaining in deliberation to reach an agreement. Bipartite bargaining is defined as a negotiation between the employer or assemblage of employers with the workers or trade unions, or between the trade unions within one corporation, who are in disagreement. If an agreement reached during the bargaining process, the next step is to design a collective agreement and sign it. Then, it needs to be registered to the industrial relations court. Once it is signed, it binds them and become the law for their work relationships. Thus, if one of the parties does not implement it, the other party can file a petition for the execution of the industrial relations court. This process must be settled within thirty working days from the time when negotiation begins. Otherwise, it will be considered that the parties fail to settle their industrial relations disputes.

If bipartite bargaining for termination of work relationship dispute fails, one party or both parties can bring their industrial relations disputes to the local manpower office and file their dispute in writing. Evidence, such as minutes is needed to attach along with the parties' signatures. The minutes show that they have tried to settle their dispute through bipartite bargaining and that they need a third party to help to settle their dispute. If they fail to provide evidence, such as minutes, the manpower office staff will not process their report, and they will be asked to complete it. After the report is completed, they will be offered to choose the dispute settlement through conciliation. If they do not choose conciliation within seven working days, the manpower

office staff will ask for a mediator help to settle the dispute.

The second mechanism is the non-litigation process. This mechanism is only allowed when the bipartite bargaining process fails. There are two possibilities of non-litigation processes that will be chosen to settle a dispute for termination of work relationships, i.e. conciliation or mediation. Conciliation will be conducted if the parties choose it within seven working days, if they do not make any choice by the due date, mediation will be chosen by the manpower office staff to resolve the dispute.

The last mechanism is the litigation process. These mechanisms include the industrial relations court and supreme court. Act Number 2, the Year 2004, regulates the settlement of industrial relations disputes through the industrial relations court from Article 81 to 112. In the case where conciliation or mediation fails to settle industrial relations disputes, both employers and employees can file a petition to the industrial relation court at the first level, which has jurisdiction covers the place where the employee works and the trial process will be free. Workers or employees can file a petition if they do not accept termination on them due to, for example, the accusation of committing serious offence or they not receiving the compensation they should have if they accept the termination. This petition must be submitted to the Court within one year after the decision on the employer is received.

Minutes that explain that the settlement through conciliation or mediation has been conducted is inserted along with this petition. The minutes is evidence that parties have tried to settle their dispute through a mechanism as required by the law. It can be said that proof is an essential requirement. If it is provided by the plaintiff, the petition will be returned. If it has been completed, a judge will examine the substances of the petition to ensure that there is no shortages exist. If it exists, a judge will ask the plaintiff to complete the petition once again. It only can be revoked before the defendant replies it. Otherwise, the approval of the industrial relations court will be needed.

In the first court session, if it is proven that the employer does not conduct his obligation, such as to pay the concerned worker wages and her/his other rights that s/he usually receives, the chairman of the judges will pass an interval verdict in the form of an order to the employer to pay all employees' rights.

In the case of there is no interval verdict that can be ordered, the judges can pass a verdict within fifty days from the first court session. A verdict is a final decision contains the grant, the dismiss of the case filed or the decision determining that a case is unacceptable (Yuheri Salman, ad hoc Judge of Industrial Relation Court of Banda Aceh). In the passing of a verdict, the judges consider the laws, existing agreement, customs, and justice. This verdict will be read out in the court session, that is open for public. Its content must be fulfilled; otherwise, it may cause the abrogation of the verdict.

Yuheri Salman stated that trial process involves eight steps, including accusation of the plaintiff, response of defendant, reply to the defendant's response by plaintiff, reply an accusation by defendant, providing evidences by plaintiff and defendant, conclusion by plaintiff and defendant, and unacceptable verdict (Yuheri Salman, ad hoc Judge of Industrial Relation Court of Banda Aceh).

Sometimes, in the urgent interest of one of the parties, if necessary, parties can request for the industrial relations court to have a hearing with faster procedure instead of hearing with an ordinary one. This procedure, whether granted or not, will be issued by the chairman of a district court within seven days after the request received. If it is granted, the chairman of a district court will determine the council of the judges, day, place and time of the court session without going through the examination process within seven days after the decision is issued. The reply and authentication by both parties in the fast hearing procedure are only 14 days.

If one of the parties is not satisfied with the verdict delivered by the industrial relations court, they can file an appeal to the Supreme Court. The Act regulates the settlement of the dispute by the Supreme Court Judge from Article 113 to 115. The appeal must be in written form and should be submitted through the Sub-registrar's office of the industrial relations court that deliver the verdict to parties. Then, the written appeal is submitted to the Head of Supreme Court within 14 working days after the appeal received.

A council consists of one Supreme Court Judge, and two Ad-Hoc judges are formed to carry out their duty to investigate the appeal and to preside over in relations disputes. The Act gives only 30 working days to settle the case after an appeal on employment termination dispute received.

3. RESEARCH METHODOLOGY

3.1. Data Sources

This paper used quantitative and qualitative research to investigate the industrial dispute settlement in Indonesia by examining the implementation of the Act in the industrial court of Banda Aceh. Data collection involved primary and secondary data.

Primarily data were from the Industrial Court of Banda Aceh. The authors attended some sessions in the court to obtain information on how the practice of the court concerning the implementation of the labor laws. Primary data were from interviews. There are five industrial court ad hoc judges in Banda Aceh Court, but due to time constraint, only two were interviewed, who are ad hoc judge Yuheri Salman and ad hoc judge Firmansyah. All data will be analyzed by selecting, focusing, simplifying, abstracting, and transforming them to address these questions: 1) What do the causes of employment termination cases brought before industrial court of Banda Aceh?; and 2) Are the interval verdict and *akta van dading*

parts of the process of industrial relations dispute settlement in industrial relations court of Banda Aceh?

Then, secondary data were from books, articles, journals and internet to discover theories, legal framework, opinions and any information related to industrial dispute settlements. This information will be analyzed by first selecting, focusing, simplifying, abstracting, and at the end, transforming them.

4. RESULTS OF THE RESEARCH

Aceh is one of the provinces in Indonesia. As part of Indonesia, Aceh also implements the national law of Indonesia, including labor law that regulates equal procedure on all types of parties, whether individual, collective or even legal entity that represents an enterprise living outside of Indonesia. The Act Number 2, the Year 2004, as one of the labor laws in Indonesia, establishes that industrial relations court authorizes to settle industrial relations dispute at each district court in each provincial capital, including in Banda Aceh.

4.1. *The Causes of Employment Termination Cases Brought Before Industrial Relations Court of Banda Aceh*

Based on the field research, in general, the cause of employment termination in the Industrial Relations Court of Banda Aceh are serious offences, unreasonable dismissal, and employment termination due to payment. However, most cases are related to severance pay. Firmansyah, an ad hoc judge in Industrial Relations Court of Banda Aceh, stated that most of the cases brought before Industrial Relations Court of Banda Aceh is related to employee's normative rights, such as severance pay and a payment as a reward for years of service (Firmansyah, ad hoc judge of Industrial Relation Court of Banda Aceh).

4.2. *Interval Verdict and Akta van Dading as Parts of the Process of Industrial Disputes Settlement in Industrial Relations Court of Banda Aceh*

a. Interval Verdict

Interval verdict is a judge decision that is not final. It is ordered by ad hoc judges, under the employee's request, in the case of the employer does not fulfill his obligation in regard to employee's rights. It is part of the Court process to guarantee the fulfillment of employee's rights and is regulated under Article 96 of the Act Number 2, the Year 2004. It is ordered as the "preparation" for the case of the employer neglecting his obligation. The object of the ad hoc judge order is the assets belonged to the employer that can be sold to fulfill the employee's rights and the value should not be higher than the request in the employee's claim. Yuheri Salman, an ad hoc judge in the industrial court of Banda Aceh, said that "It is possible to order interval verdict as long as the assets belonged to employer or someone related to employer if there is an agreement between the employer and the owner of the

assets (Yuheri Salman, ad hoc Judge of Industrial Relation Court of Banda Aceh).

b. Akta van Dading

Akta van Dading is a conciliation reached by the employer and the employee during the trial process, that is written on a conciliation letter. It becomes the basis for industrial relations court to deliver an “*akta van dading*.”

During the trial process, chairman of ad hoc judge always keeps reminding the plaintiff and defendant to conciliate and reach an agreement. If they agree with conciliation, ad hoc judges will allow them to meet outside the courtroom with the absence of ad hoc judges. Plaintiff and defendant will negotiate to set the time and the place to further negotiate in front of ad hoc judges. They will meet at the set time and place. Then, the trial process will be cancelled to allow them to negotiate and to wait for the result of the negotiation. This negotiation process must not be prolonged because all the court settlement process is no more than fifty working days.

In the case of an agreement is reached by both plaintiff and defendant, it will be written in a conciliation letter called “conciliation agreement.” This letter will be submitted to ad hoc judges, who then based on “conciliation agreement” deliver an *akta van dading* as an official document. The official document gives the conciliation letter binding power. If they fail to reach an agreement, they also have to inform ad hoc judges and then the trial process will proceed.

5. CONCLUSION

Based on the description above, there are conclusions that can be drawn. First, the causes of employment termination in the Industrial Relations Court of Banda Aceh are serious offences, unreasonable dismissal, and employment termination due to payment, but most cases are related to severance pay. Second, Interval Verdict and *Akta van Dading* are Parts of the process of Industrial Disputes Settlement in Industrial Relations Court of Banda Aceh.

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