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Classification of Industrial Relations Disputes Settlement in Indonesia: is it Necessary?

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Abstract: This study aims to examine the effect of the classification of disputes in the industrial settlement system, comparing arrangements according to the perspective of International Labor Organization, China, Japan and Kazakhstan and trying to find the ideal concept of the type of industrial dispute to applied in Indonesia. This research is normative legal research using statutory approach, conceptual approach, fact approach and comparative approach. The results indicate that the classification of disputes in the industrial relations settlement system in Indonesia has an impact on the difficulty of the parties in classifying their disputes. Comparative studies were conducted to determine the classification of disputes in international law as well as in China, Japan and Kazakhstan. The ideal concept that can be offered to Indonesia is simplification or elimination of the classification industrial relations to provide dispute resolution by applying the principles of fast, precise, fair and inexpensive methods

Keywords: Classification; Industrial Relation; Dispute Settlement; Indonesia

1. Introduction

The Indonesian Law Number 13 of 2003 concerning Manpower (hereinafter Manpower Law) regulates industrial relation as a coordination between labors/workers, entrepreneurs, and government in production process of goods and/or services in accordance with the state ideology Pancasila and the 1945 Constitution of Indonesia (hereinafter the 1945 Constitution). The industrial relations in Indonesia related with working relation between entrepreneurs and labors/workers, which consists of the elements of occupation, wage and order. The position of labors/workers and entrepreneur which usually happen to be unequal might arises any dispute between parties as a form of unfulfilled rights of one party (especially labors/workers). Hence, it

can't be denied that the implementation of work, company and labors/workers may have disputes in work relations.

According to Article 1 paragraph 1 of the Indonesia Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement (hereinafter Industrial Relation Dispute Settlement Law), it is stipulated Industrial Relation as follow:

> "a difference of opinion resulting in a dispute between employers or an association of employers with workers/laborers or trade unions due to a disagreement of right, conflicting interests, a dispute over termination of employment, or a dispute among trade unions within one company".

Dispute over rights is defined as a dispute arising from the unfulfillments of rights, that occur from a difference interpretation or implementation of any rules and regulation, as well as interpretation or implementation of work agreement, company regulation, and/or the collective labor agreement. Dispute over interest means a dispute arises in the work relationship due to non-convergence of opinions in the drawing up of, and/or changes in the work requirements as stipulated in the working agreement, or company regulation or collective labor agreement. Dispute over termination of employment refers to the dispute that arise from the inconsistency of opinion regarding the termination of the employment relationship carried out by one of the parties. Last, the term "conflict among trade unions" refers to a disagreement between one trade union and another inside the same company over membership, implementation of rights, and obligations to the union. These various disputes arise because of the unfulfillment or violation of rights by one party, either by the company or worker/labor. Knowing that there are several classification disputes in industrial relations system, it is important to find out the appropriate and fair settlement.

The classification of disputes in industrial relations is the government endeavors to provide a fast, proper, and inexpensive dispute settlement. The industrial relations disputes settlement law regulates several mechanisms can be taken by the parties in order to solve the industrial disputes. The parties involved in the disagreement is obliged to conduct a bipartite settlement, however if the bipartite settlement did not result in agreement, then the bipartite meeting will be considered to have failed, thus the parties can choose to settle through conciliation or arbitration.[1] If conciliation or arbitration fails to produce a satisfactory result, one of the parties may file a formal petition with the Industrial Relations Court.

The classification of disputes in the industrial relations system has resulted in a huge impact in terms of the effectivity of dispute settlement in Indonesia. This classification is considered to bring a narrow interpretation, which interpreted several disputes that shall be settle as the authority of Industrial Relation Court then interpreted as the authority of another court. The classification also resulted in a huge ambiguity for the parties involved in the disagreement to classify the type of dispute that occurs. Further, the classification also related to the settlement mechanism needs to be taken by the parties. However, all

[1] Maskun et al., "Arbitration: Understanding It in Theory and Indonesian Practice," *Hasanuddin Law Review* 5, no. 2 (2019): 220–34, https://doi.org/10.20956/halrev.v5i2.1945.

this concept and procedure is still far from being effective and efficient.[2] Every each of the dispute in the context of manpower in Indonesia has its own consequences in terms of the settlement procedure, especially in terms of legal action can be settle through the Industrial Relation Court.

The industrial relations settlement system is hoped to be able to implement the principle of fast, proper, fair and inexpensive dispute settlement. The Industrial Relation Court was formed as a special court, which has special characteristics in resolving industrial relations disputes involving workers/labors and employers. The special character is expected to facilitate public access to settle their dispute through the Industrial Relation Court. However, it is found that the industrial relations dispute settlement systems in Indonesia still faces various obstacles both in terms of its regulation and practical aspects.

One of the interesting issues that need to be examined in depth in the context of realizing the reform of the dispute settlement in Indonesia in the future is related to the reformulation of regulation (classification) of the disputes regulated in Indonesian labor law instruments. This regulatory change will certainly bring a major influence on the dispute settlement system and also the procedure of the Indonesian dispute settlement on industrial relation. It's important to compare the arrangement in several other countries to find out their way of settling industrial disputes as well as in the perspective of international law.

This research tries to find out several issues related to the legal issue concerning to classification of dispute in industrial relations system in Indonesia. The problem will be discussed and analyzed in this research include:

1. Does the arrangement for the classification of industrial relation disputes affect the implementation of quick, appropriate, just and inexpensive principle of the concept of industrial relations dispute settlement in Indonesia?
2. How do the arrangements of industrial relations dispute settlement in the perspective of international law and in several other countries?
3. What is the ideal concept that can be offered in the form of *ius constituendum* responding to the classification of industrial relations dispute?

In the midst of various studies that raise various issues related to the industrial relations dispute settlement system carried out in Indonesia, there is no specific studies that previously raised similar problems. Hence, in terms of originality and novelty the research specifically tries to examine the efforts to reformulate the classification of types of disputes. To improve the effectiveness and efficiency aspects of the industrial relations dispute settlement system in responding to the challenges of the developing business and industrial community nowadays.

[2] Haikal Arsalan and Dinda Silviana Putri, "Reformasi Hukum Dan Hak Asasi Manusia Dalam Penyelesaian Perselisihan Hubungan Industrial," *Jurnal HAM* 11, no. 1 (2020): 39, https://doi.org/10.30641/ham.2020.11.39-50.

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2. Method

This research was normative legal research, which imagines law as a prescriptive discipline[3], focusing on law and regulation to find out the answer of any legal problem occurs.[4] This research used several approaches, namely statute approach, conceptual approach, fact approach, and comparative approach. The results of the research were collected, analyzed and described in analytical descriptive legal research.

3. Discussion The Effect of Classification of Industrial Relations Dispute on the Principles of Quick, Appropriate, Just and Inexpensive in the Industrial Relation Disputes Settlement

An industrial relations dispute means "a difference of opinion resulting in a dispute between employers or an association of employers with workers/laborers 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". According to the Industrial Relations Dispute Settlement Law, the industrial relations disputes can be classified into four types, inter alia: dispute over rights, dispute over interest, dispute over termination of employment, and dispute among trade unions.

The industrial disputes relations can be resolved through litigation or non-litigation.[5] The non-litigation settlement over industrial disputes relations can be resolved through:

1. non-adjudication, means a settlement outside the court without conducting an examination or trial as in court, as follow:

   a. Bipartite

      Bipartite bargaining refers to "meeting between the workers/laborers or trade unions and the employers to resolve disputes in industrial relations".[6] According to the Industrial Relations Dispute Settlements Law, bipartite meeting is required to be conduct first in order to resolved the disputes. If there is no agreement reached on the bipartite meeting, it still need to be reported to the local authorized manpower office.

   b. Mediation

      Mediation means "a settlement of disputes over rights, conflict over interests, dispute over termination of the work relationship, and dispute between worker/labor unions within one company only through deliberations that are interceded by one or more mediators who are neutral". This procedure is

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[3] Nafay Choudhury, "Revisiting Critical Legal Pluralism: Normative Contestations in the Afghan Courtroom•," *Asian Journal of Law and Society* 4, no. 1 (2017): 229–55, https://doi.org/https://doi.org/10.1017/als.2017.2.

[4] Karen Petroski, "Legal Fictions and the Limits of Legal Language," *International Journal of Law in Context* 9, no. 4 (December 2013): 485–505, https://doi.org/10.1017/S1744552313000268.

[5] Broto Suwiryo, *Hukum Ketenagakerjaan : Penyelesaian Perselisihan Hubungan Industrial Berdasarkan Asas Keadilan* (Surabaya: LaksBang Pressindo, 2017).

[6] Dewa Nyoman Rai Asmara Putra, Kadek Agus Sudiarawan, and Ari Mahartha, "Interest Dispute Settlement Related to Workers' Health Care Security in Indonesia" 4, no. 1 (2020): 62–80, https://doi.org/https://doi.org/10.24843/UJLC.2020.v04.i01.

carried out by a mediator, who is stationed in every District/City manpower office. Mediation can be carried out if the Bipartite meeting is considered to be failed. The mediator can provide a written recommendation to both parties even though it is not legally binding. In the phase if the parties reached the agreement on industrial relation dispute settlement through mediation, a Collective Agreement must be written down, signed, and seen by the mediator, then it must register to the Industrial Relations Court under the District Court jurisdiction to acquire a registration deed. [7]

c. Conciliation

Conciliation means "the settlement of dispute over interest disagreements over termination of work relationship, or dispute between trade unions within one company only, through deliberations interceded by one or more neutral conciliators". This process is implemented by a conciliator that cover within workers/laborer place of work. If a conciliation agreement is achieved to resolve an industrial relations dispute, the collective agreement must be written down, signed by both parties, and witnessed by conciliator, and later be registered at the Industrial Relations Court in the District Court within the jurisdiction where the parties conducting the Collective Agreement, in order to obtain a registration deed. If this method fails, both parties may proceed through Industrial Relations Court that located under jurisdiction of local District Court to resolve the dispute. [8]

2. Adjudication is the settlement of disputes outside the court, but it is carried out by examining cases such as court proceedings, but not carried out by the court. It is carried out by arbitration. According to the Industrial Relations Disputes Settlement Law, Arbitration is "the resolution of a dispute over interests, and dispute between trade unions within one company only, outside the Industrial Relations Court through a written agreement from the parties in dispute who agree to submit the settlement of the dispute to an arbiter whose decision is binding on the parties involved and is final". However, the arbitration decision can only be canceled by the Supreme Court.

The industrial relations disputes settlement can be carried out through the Industrial Relations Court (hereinafter the Court), which is known as a special court within the general court. The Civil Law is the current legal proceeding in the Court, unless otherwise regulated under the Industrial Relations Disputes Settlement Law. The Court is "assigned and authorized to investigate and adjudicate at the first level regarding disputes on rights; at the first and final levels regarding disputes on interests; at the first level regarding

[7] Zaeni Asyhadie and Rahmawati Kusuma, *Hukum Ketenagakerjaan Dalam Teori & Praktik Di Indonesia* (Jakarta: Prenadamedia group, 2019).

[8] M Thaib and Ramon Nofrial, *Penyelesaian Perselisihan Hubungan Industrial* (Yogyakarta: Deepublish, 2019).

disputes on termination of employment; and at the first and final levels regarding disputes between workers unions/labor unions within a company".[9]

The industrial relations disputes settlement shall be able to implement the principles of fast, proper, inexpensive process of dispute settlement. The principles are identical to the principles in Indonesia system of judicature in general.

Those principles are embodied the Article 2 Paragraph (4) of the Law Number 48 of 2009 concerning the Judicial Power (hereinafter the Judicial Power Law). According to the explanatory notes of the Power and Judiciary Law, the disputes settlement carried out by way of efficiently and effectively. The dispute settlement also has to be carried out in the amount of fees that can be reached by the community. However, these principles did not rule out the thoroughness and accuracy in the search for truth and justice.

Unfortunately, these principles cannot be implemented properly in the industrial relations dispute settlement. The failure of implementation is caused by the classification of disputes relations itself. The classification of disputes relations has resulted confusion in workers/laborers or even the employers disputed. The parties cannot classify their disputes easily. It also affected the legal action can be carried out to resolved the disputes. The parties have to find out the specific type of the disputes to resolved the disputes in a proper way as regulated in the Industrial Relations Disputes Settlement Law, since according to the law, each type of dispute can be resolved in different level and mechanism as stipulated in Article 56 of the Industrial Relations Disputes Settlement Law.

The assignment and authorization of the Industrial Court in investigating and adjudicating disputes in industrial relations surely will add more complex burden to the parties, especially for workers who are trying to get their rights. The understanding of the parties, especially the workers with regard to the dispute settlement mechanism could be another obstacle for them. In the middle of economic pressure and minimum level of education, the workers/laborers tend to be the disadvantaged party. This condition does affect the psychological condition of the workers/laborers who are trying to settle their disputes through the Court.

Hence, it is urgently needed a simple industrial relations disputes settlement system with clear and appropriate stages that can be accessed by the parties in accordance with the demands of community, especially in the business community. By arranging a simple dispute resolution system, it will certainly make it easier for the disputing parties to resolved their dispute. Therefore, the principle of fast, proper, inexpensive dispute settlement can be implemented properly.

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[9] Muhammad Ishar Helmi and Riko Herl Pilo, "INDEPENDENSI HAKIM AD-HOC PADA LINGKUNGAN PERADILAN HUBUNGAN INDUSTRIAL," *Jurnal Hukum Dan Peradilan* 6, no. 2 (July 2017): 233, https://doi.org/10.25216/JHP.6.2.2017.233-258.

4. Comparison of Arrangement Based on International Law and Other Countries

4.1.International Labor Organization (ILO)

Labor disputes can be classified into several kind. Most governments have differentiated between different sorts of labor disputes and set unique methods for dealing with them. Each country's distinctions and methods are usually based on the country's distinctive historical development of its labor relations system. According to ILO, there are several major labor disputes. The dispute between individual and collective are common to apply, this matter usually contains dispute about rights and dispute about interest (also known as "economic dispute").[10]

A right dispute can be defined as a disagreement about the violation or interpretation of an existing right (or obligation) enshrined in a legislation, collective bargaining agreement, or individual employment contract. And at its heart lies the claim that a worker, or a group of workers, has been denied their rightful compensation (s).

A right dispute involves the existence, validity or interpretation of a collective agreement or its violation.[11] Interest disputes, on the other hand, are frequently the outcome of a failure of collective bargaining and emerge from disagreements over the determination of future rights and obligations. Based on the ILO's 154th Convention of 1981 concerning the promotion of collective bargaining, it stated that:

> "Collective bargaining extends to all negotiations which take place between an employer, a group of employers or one more employers' organization, on the one hand, and one or more workers' organizations, on the other, for, a) determining working conditions and terms of employments; and/or b) regulating relations between employers and workers; and/or c) regulating relations between employee or their organizations and a workers' organization or workers' organizations."

According to ILO, Individual and collective disagreements are difficult to distinguish since an individual dispute has the potential to turn into a collective dispute, especially when a principle is at stake and if it is taken up by a trade union. Generally, it can be understood that a dispute is individual if it involves only a single worker, or a number of workers as individual, otherwise it is classified as a collective dispute if it involves a number of workers collectively.

In terms of general dispute settlement, the ILO recommends the basic principle guiding methods for resolving conflicts is through negotiation. However, if the negotiation is unsuccessful, the dispute can be settled by tribunal (or arbitrator for some countries). [12]

Therefore, in terms of collective disputes, the kind of dispute usually has its own method for resolving it. In the case of a rights dispute where there's a valid collective agreement, there might be provisions regulated the mechanism that must be follow in the event of

[10] (Labor Legislation Guidelines, n.d.)

[11] O V C Okene and C T Emejuru, "The Disputes of Rights Versus Disputes of Interests' Dichotomy in Labour Law: The Case of Nigerian Labour Law," *HeinOnline*, vol. 35 (Online, 2015), http://www.bibliojuridica.org/libros/1/43/7.pdf.

[12] "Labour Legislation Guidelines."

dispute. [13] There are several mechanisms can be taken in resolving such disputes, inter alia alternative dispute resolution (also known as ADR) with three essential options, namely: Conciliation, Mediation and Arbitration, or settling the dispute through court or labor tribunal.

4.2.China

In China, the labor dispute system was initiated in 1950. It was symbolized by the Rule on Organizational Structure and Working Procedure of Municipal Labor Dispute Arbitration Committee, which enacted by the Ministry of Labor back in June 1950 and Regulations on Labor Dispute Settlement Procedure by the Ministry of Labor with approval of the State Administrative Council back in November 1950.[14] According to Regulation on Labor Dispute Settlement Procedure, there are four stages can be taken in terms of labor dispute resolution, namely: negotiation within enterprise, mediation, arbitration and litigation.[15] The current Chinese labor dispute resolution system is mostly focused on individual issues. In a restricted sense, collective labor disputes are described by "Labor Dispute Mediation and Arbitration Law", in which Article 7 stipulates that "Where a labor dispute involves more than ten employees and the employees have a same claim, they may recommend their representatives to participate in the mediation, arbitration, or litigation". [16]

Recently, labor relations in China have experienced significant changes as the effect of globalization. [17] The labor dispute settlement in China used to be solve through one-track process, consisting of three stages namely: mediation by Enterprise Labor Dispute Mediation Committee, mandatory arbitration by Local Labor Dispute Arbitration Committee, and Litigation by People's Court of first instance and second instance. [18] However, this mechanism has brought some disadvantages, for instance: first, it is time-consuming; second, it involves a lot of time and expenditures for parties to a dispute; and third, the process shows low efficiency. Thus, it needs to be simplified.

In this regard, the one-track system has been suggested to be transformed into double-track system, where the disputing parties have free choice of arbitration or litigation. [19] Later in 2008, China has applied regulation concerning labor dispute resolution named

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[13] International Labour Office, "Collective Dispute Resolution through Conciliation , Mediation and Arbitration : European and ILO Perspectives International Labour Office," 2007.

[14] Zhenqi Wang, Changshuo Wang, and Shangyuan Zheng, "Labour Disputes Settlement System in China: Past and Perspective," *IDE Asian Law Series No.22*, no. 22 (2003): 1–62.

[15] Ibid.

[16] Wei Chi, Yueting Ji, and Wei Huang, "Mediation and Conciliation in Collective Labor Conflicts in China," 2019, 265–77, https://doi.org/10.1007/978-3-319-92531-8_17.

[17] Chung Sun Wook, "Industrial Relations (IR) Changes in China: A Foreign Employer's Perspective," *Employee Relations* 38, no. 6 (January 1, 2016): 826–40, https://doi.org/10.1108/ER-06-2015-0120.

[18] Wang, Wang, and Zheng, "Labour Disputes Settlement System in China: Past and Perspective."

[19] Ibid.

The Labor Mediation and Arbitration Law, also known as "LMA". [20] According to LMA, the Chinese system of resolving labor disputes can be identified as follow:[21]

a. Individual labor disputes in China are mainly resolved by labor arbitration within government administrative bodies, with limited recourse to the courts.
b. In China, statutory labor disputes are mostly settled by labor arbitration within government administrative agencies, with limited recourse to the courts.;
c. Individual contractual labor conflicts in China, which are generally addressed in labor arbitration within government administrative bodies, with limited access to the courts, under contracts negotiated by unions;
d. Before, during, or after arbitration, mediated settlements are usual, and courts normally defer to them;
e. Except in limited circumstances, Chinese courts generally defer to labor arbitrator verdicts..

The mechanism also applied in the resolution of individual labor rights disputes arising under contract or statute in China. [22] It is important to choose appropriate dispute settlement resolution since different mechanism might have different outcome for different disputing parties. [23]

4.3.Japan

The Labor dispute in Japan classified into two types such as individual labor rights disputes and collective labor disputes which can arise from variety of sources like from discipline, termination and contract violation. [24] Due to Labor Tribunal System exclusively handles individual labor disputes, any sort of civil dispute, including labor conflicts, falls under the jurisdiction of the civil courts. [25] In terms of labor rights disputes, Japan also faces similar condition with China. The individual labor rights disputes may arise from contractual or statutory labor rights and may involve an individual or collective labor rights. [26] In regard to labor disputes in Japan, the party can filed the request to settle their dispute through conciliation, mediation or arbitration. [27] The Labor Relations Commission, which

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[20] Ronald C. Brown, "Comparative Alternative Dispute Resolution for Individual Labor Disputes in Japan, China and the United States: Lesson from Asia?," *St. John'S Law Review* 86 (2012): 543–77, http://www.upf.edu/gredtiss/_pdf/2013-LLRNConf_Brown.pdf.

[21] Ibid.

[22] Jiaojiao Feng and Pengxin Xie, "Is Mediation the Preferred Procedure in Labour Dispute Resolution Systems? Evidence from Employer–Employee Matched Data in China," *Journal of Industrial Relations* 62, no. 1 (2020): 81–103, https://doi.org/10.1177/0022185619834971.

[23] Ibid.

[24] Brown, "Comparative Alternative Dispute Resolution for Individual Labor Disputes in Japan, China and the United States: Lesson from Asia?"

[25] Megumi Honami, "How Successful Is Japan ' s Labor Tribunal System ?: The Labor Tribunal ' s Limited Scope and Effectiveness," *Law, Asian-Pacific Journal, Policy* 16, no. 1 (2007): 83–100.

[26] Brown, "Comparative Alternative Dispute Resolution for Individual Labor Disputes in Japan, China and the United States: Lesson from Asia?"

[27] "National Labour Law Profile: Japan," accessed February 24, 2021, https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158904/lang--en/index.htm.

represents employees, employers, and the general public, has a considerable effect on each mechanism.

Generally, Japan acknowledges two dispute resolution systems, namely Public system and Private System. [28] In terms of Public System, the dispute can be settled through courts, named "Labor Tribunal", which usually be used for resolving individual labor disputes. [29] In order to resolve the dispute, Labor Tribunal can always try to mediates the disputing parties during the settlement. Along with Labor Tribunal, Japan also implements the Administrative Procedures under the System for Promoting Individual Labor Dispute Resolution, which were previously solely available for collective disputes. In terms of the public sector, Japan also has Labor Commissions, which have jurisdiction over unfair labor practice proceedings and the resolution of industrial disputes under the Trade Union Law. [30]

Along with public system, Japan also applies Private system such as a joint-consultation between the employer and the trade union or consultation with middle managers to prevent workplace disputes. [31] Thus, the dispute settlement process in Japan can be settle in government institution and vary, depends on whether the right is individual or collective. [32]

4.4.Kazakhstan

The legal basis for the existence of legal protection for the settlement of labor disputes in Kazakhstan originates from the attribution provided by the Kazakhstan Constitution, namely Paragraph 2 of Article 13 that ensures that everyone's rights and freedoms, particularly social and labor rights and freedoms, are protected by the law. From the provisions of the Constitution, it is stipulated further in the Labor Code of the Republic of Kazakhstan (*Қазақстан Республикасының Еңбек Кодексі*) regulates the procedure of labor dispute settlement, which are expected to be able to protect the workers' rights.

The Labor Code of 2016 introduced a mandatory pre-trial Labor Dispute review procedure. Unfortunately, statistical research shows that mandating pre-trial settlement of labor disputes in conciliation commissions is an inefficient approach in Kazakhstan's circumstances. [33]

According to the Labor Code of Republic Kazakhstan 2015 Article 1 No 16, it stipulated that "Labor dispute is a disagreement between the employee (employees) and the employer (employers) on application of the labor legislation of the Republic of Kazakhstan, implementation or amendment of the terms of agreements, labor and (or) collective contracts, employer's acts".

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[28] Ryuichi Yamakawa, "The Labor Dispute Resolution System in Japan : Recent Developments , Their Background and Future Prospects" 168 (n.d.).

[29] Ibid.

[30] Ibid.

[31] Ibid.

[32] Brown, "Comparative Alternative Dispute Resolution for Individual Labor Disputes in Japan, China and the United States: Lesson from Asia?"

[33] Zh[illegible]a Khamzina et al., "Labor Disputes in Kazakhstan: Results of Legal Regulation and Future Prospects," *Journal of Legal, Ethical and Regulatory Issues* 23, no. 1 (2020): 1–14.

The Industrial relations disputes in Kazakhstan will not arise, unless disputes over rights or legal interest of the employers or employee are bought against the competent authority with jurisdiction for the specified resolution. [34] Kazakhstan's Labor Law stipulates a variety of ways for resolving disputes, depending on whether they are individual or collective. Individual settlements are primarily governed by the Labor Law, whereas collective labor conflicts are regulated by two statutes: "The Law on Collective Labor Disputes and Strikes" and "The Labor Law". [35]

Article 97 of Kazakhstan's labor law stipulates that: "Disputes can be settled through mutual agreement or through general jurisdiction courts". According to Article 6 and 7 of the Law on Collective Labor Disputes and Strikes it can be understood that the party can settle their dispute by labor arbitration or mediation. In Kazakhstan, mediation shall be the initial alternative for resolving labor disputes, second, institution negotiators are more or less the case in labor relations regulation; and third, social partnership as a means of resolving labor disputes. [36]

5. The Ideal Concept of Regulating Types of Disputes and Settlement of Dispute in Indonesian Industrial Relations as a Form of *Ius Constituendum*

The principle of fast, proper, and inexpensive dispute settlement applies or tries to be adopted at every procedure of dispute settlement, including in all judicial bodies in Indonesia, as well as the Industrial Relations Court. This principle is known as a mandate of the Indonesian Judicial Power Law, which aims to meet the expectation of justice seekers to be able to find effective and efficient way to resolve their dispute in the middle of rapid development in the business community.

In terms of the relationship between workers/laborers and the employers, there will always be a different interest between the parties that is potential to cause disagreements and even conflicts between them. The workers/laborers tend to be in a subordinate position due to differences in economic conditions, education levels, and job requirements. This condition might create an exploitation condition of the worker's rights which may results in an unfavorable condition in a working relationship that affects the productivity and the achievement of the company target.

The different opinion and interpretation regarding implementation of working agreement, company regulation and collective agreements are main issues in industrial relations disputes. The industrial relations disputes settlement in Indonesia is regulated in Manpower Law, Industrial Relations Disputes Settlement Law, and several related regulations, including the Law Number 11 of 2020 concerning the Job Creation (hereinafter Job Creation Law). However, the enactment of Job Creation Law, especially the Manpower cluster does not regulate any reform in terms of classification of industrial

[34] Guzal Galiakbarova et al., "Legal Analysis of Individual Labor Disputes in the Republic of Kazakhstan," *Indian Journal of Science and Technology* 9, no. 14 (2016): 1–11, https://doi.org/10.17485/ijst/2016/v9i14/91074.

[35] "National Labour Law Profile: Kazakhstan," n.d.

[36] A. Beissenova et al., "Labour Conflicts in Kazakhstan: A Specific Character of Their Solution," *Procedia - Social and Behavioral Sciences* 82 (2013): 877–81, https://doi.org/10.1016/j.sbspro.2013.06.364.

relations disputes and its settlement. Hence, any matter related to industrial relations disputes settlement still refer to the Industrial Relations Dispute Settlement Law.

In fact, issues related to changes in the dispute settlement and the reconstruction of disputes classification are included in several problematic issues in the current Indonesian Labor Law system. The classification of industrial disputes abovementioned and its procedure have caused several obstacles in the dispute settlement procedure, which must be resolved immediately. This condition does not comply with the principle of fast, proper, and inexpensive dispute settlement.

According to the international law, the regulation concerning classification of industrial relations disputes and its settlement can be classified into several types. Based on ILO, the industrial relations disputes can be classified into individual dispute or collective dispute, which includes the dispute over right and dispute over interest. In terms of disputes settlement, the international law provides the alternative dispute resolution before taking the disputes to be resolved through the Court. The disputes can be resolved through negotiation, mediation, conciliation, even arbitration. It is aimed to find a win-win solution for both parties.

Likewise, when comparing the arrangement of industrial relations disputes in Indonesia and several countries including China, Japan, and Kazakhstan, it was found that each country has a different rules and regulation, including its procedure, and the assessment of industrial dispute resolution objects, as well as their respective faults or deficiencies in enforcing the industrial relations disputes settlement, which can be seen in the following table:

Country	Legal Basis	Procedure of Labor Dispute Settlement	Classification of Labor Dispute Settlement Object	Disadvantages
Indonesia	Indonesian Law Number 13 of 2003 concerning Manpower Indonesia Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement	Bipartite, Tripartite, litigation	- dispute over rights, - dispute over interest, - dispute over termination of employment, and - dispute among trade unions.	Narrow interpretation concerning the classification of industrial relations disputes.
China	Labor Law / 劳动法 (1995), Labor Contract Law (2008), Regulation on Settlement of Labor Disputes in	Article 6 Regulation on labor dispute settlement enterprises; 1. negotiation; 2. mediation; 3. arbitration;	Individual and Collective labor dispute (Article 7 LDMA). (China labor law mainly focuses on individual dispute)	Time consuming, involves a lot of time and expenditures for parties to a dispute, low efficiency of process (needs to be simplified)

	35 Enterprises / 企业劳动争议处理条例, 14 Rule on Organizational Structure and Working Procedure of Enterprise Labor Dispute Mediation Committee, Rule on Organizational Structure and Working Procedure of Labor Dispute Arbitration Committee and Rules on Recruitment of Labor Dispute Arbitrators 28 Labor Dispute Mediation and Arbitration Law / 劳动争议调解仲裁法	4. Litigation through people's court		
Japan	Article 8 Constitution, Trade Union Law of 1949 (**労働組合法**, *roudou-kumiaihō*), 4 Law on Promoting the Resolution of Individual Labor Disputes (Law No.112, July 11, 2001). Labor Relations Adjustment Law, Labor Tribunal System (LTS) Law No.45 of 2004	Public System (Labor Tribunal used for individual labor dispute) Private System (Consultation with middle managers or a joint consultation between the employer and the trade union) 4 In the process of resolving the individual labor dispute at hand, LTS combines mediation, conciliation, and adjudication.	Individual Labor Right dispute, collective labor dispute	Any sort of civil dispute, including labor conflicts, falls under the jurisdiction of the civil courts.; Labor Tribunal System is only for individual labor disputes
Kazakhstan	The 3 Constitution of Kazakhstan in paragraph 2 of Article 13 Labor code of the Republic of Kazakhstan (Қазақстан Республикасының Еңбек Кодексі),	Labor Law Article 97, Disputes can be settled by agreement between the parties or by appealing to	Individual or collective dispute	In the circumstances of Kazakhstan, Conciliation commissions implementing 3 obligatory pre-trial settlement of labor disputes is

	general jurisdiction courts.	an inefficient practice.
	Pre-trial Labor Dispute review procedure are mandatory by The Labor Code of 2016	Dispute over workers are under the jurisdiction of the general court

The table above illustrates the condition in Indonesia, China, Japan, and Kazakhstan, which have something in common where industrial relations disputes settlement can be resolved first through a non-litigation procedure before entering the litigation procedure. However, in terms of classification of disputes, generally the international law, including China, Japan and Kazakhstan only classify the disputes in more simple way, namely individually or as collective dispute. Thus, it can be interpreted that this condition might minimize the narrow interpretation of the classification of the disputes in Indonesia.

Based on these conditions, several changes need to be made, especially in terms of classification of industrial relations disputes and its settlement mechanism. It is very relevant for the purpose of improving the Indonesian industrial relations disputes settlement system to be more effective and to be able to answer the challenges of industrial relations in the future.

The classification of industrial relations disputes in Indonesia needs to be reformed. The reformation will change the narrow interpretation into a wider interpretation. Thus, any disputes arise from industrial relations can be resolved through the industrial relations dispute settlement, without any specific classification of disputes. The simple concept of industrial disputes will make it easier for both parties to resolved their disputes, since there won't be any confusion in terms of classification of dispute that occurs.

This condition must be resolved immediately by changing the concept of classification of industrial relations disputes, which shall be followed by changes in the settlement mechanism, especially in relation to procedural law in the Court. This change must be in accordance with the main objective, namely to provide an effective industrial relations dispute settlement system in responding to current industrial relations conditions and its challenges.

In terms of the settlement mechanism, according to the Industrial Relations Disputes Settlement Law, there are several procedures can be taken to resolve the dispute, namely negotiation, mediation, conciliation, or arbitration. These procedures are still relevant with the current industrial relations conditions. Since it is necessary to provide a win-win solution for both parties in a short time. Therefore, the disputes can be settled effective and efficiently.

However, if there is no agreement upon parties, both parties can continue to settle the dispute through the Court. Hence, it is necessary to provide a proper procedural law system that applies to the Court. The procedural law must be designed to be able to accommodate and answer demands for effective and efficient way in settling the dispute for both parties.

According to Article 57 of the Industrial Relations Disputes Settlement Law, it is known that the prevailing legal proceeding in the Court is the Civil Law Proceeding prevails at the general court. This condition results in the character of the Court being no different from the general court, thus the industrial relations dispute cannot be resolved quickly and tends to be convoluted.

The hearing procedure in the Court shall be done in a simple, fast, effective and efficient procedure. The procedure can be done effectively by emphasizing only the important sub-points that must be passed in the trial, such as reading the lawsuit, answering the lawsuit, proof and verdicts. This idea was previously regulated in the Supreme Court Regulation Number 2 of 2015 concerning Simple Lawsuits (hereinafter Supreme Court Regulation 2/2015). Unfortunately, this provision in particular cannot be adopted directly for every dispute in the Court, especially in the regulation regarding the lawsuit value for civil cases, which is not more than IDR 200 million.

The Industrial Relations Disputes Settlement Law regulates legal remedies that can be taken in settling the disputes. From the procedural law and decisions of the Court, there are 3 (three) types of legal remedies used in the Court, namely *verzet*, cassation (ordinary legal remedy) and reconsideration (extraordinary legal remedy). However, the hierarchy of legal remedies in the Court is different from the general court. Legal remedies in the Court consists of Cassation and Reconsideration (extraordinary legal remedy). For disputes over rights and termination of employment, the judicial process consists of 2 (two) stages, namely the first level at the Court and the final level at the Supreme Court. Meanwhile, for the dispute of interest and dispute between labor union in one company both the first and last level is settled at the Court. However, due to this condition, it is still possible to submit legal remedies for reconsideration with the provisions as regulated by the law (Article 57 of the Industrial Relations Disputes Settlement Law).

This condition might become an obstacle for the parties, since they have to take a long time just to obtain legal certainty. Formers of laws and regulations in an effort to revise the industrial relations dispute settlement system which has been buzzing several times starting from 2009 (proposed amendments to the Industrial Relations Disputes Settlement Law) and 2015 (entered into the initiative national legislation program from the House of the Representative) must be able to accommodate this issue and be able to provide a better, efficient, and effective settlement system.

The simplification of the classification of industrial relations disputes must be followed by a change in the concept of the procedure of disputes settlement as well. Simplification of legal remedies in the dispute settlement mechanism should also be adopted in the amendment to the Industrial Relations Dispute Settlement Law, which is one of the most relevant things to be changed.

According to the Article 57 of the Industrial Relations Disputes Settlement Law, it is well acknowledged that the Civil Law Proceeding is the most common legal proceeding in the court, unless specifically provided for by the Act. However, related to the Constitutional Court Reconsideration through Decision Number 34/PUU-XVII/2019 then it was confirmed that int Court could not be submitted for a Reconsideration. One of the bases used is the publication of SEMA Number 3 of 2018 concerning the Enforcement of the

Formulation of the Result of the Plenary Meeting of the Supreme Court Chamber of 2019 as a guideline for the court. One of the interpretations of the Supreme Court is to close legal remedies for Reconsideration at the Court. The Constitutional Court considers that the provision of Article 34 of Supreme Court Law considers as the *lex generali* in terms of Reconsideration and exempted by the provision of the law which considers as the *lex specialis* in terms of the case and stipulated conditions to be able to filed for a Reconsideration.

According to this condition, it is important to regulate the restriction of the process and stages regarding filing an appeal and cassation on the decision of the Court. The classification of industrial relations disputes is very relevant to be eliminated immediately by limiting legal remedies without eliminating the rights of justice seeker. This effort will certainly be able to provide a faster way to settle dispute, especially for dispute over rights and termination of employment. However, related to reconsideration, it is very relevant to keep it regulated and given space for justice seeker as regulated on the Industrial Relations Disputes Settlement Law.

The characteristics of Reconsideration as an extraordinary remedy is the final right for justice seeker to the decision of the Court which legally binding. Of course, this must still be based on the reason for filing a Reconsideration as regulated in the rules and regulation. The future Court must be able to have an independent procedural law. Hence, the simplification or even elimination of classification of industrial relation is necessary to be done in order to provide an effective and efficient dispute settlement through Court by implementing the principle of quick, appropriate, just and inexpensive way of settling dispute.

6. Conclusion

The classification of disputes in industrial settlement system in Indonesia has an impact on the difficulties of the parties in classifying their disputes. Indonesia urgently needs a simple industrial relations disputes settlement system with clear and appropriate stages that can be accessed by the parties in accordance with the demands of community, especially in the business community. By arranging a simple dispute resolution system, it will certainly make it easier for the disputing parties to resolved their dispute. Therefore, the principle of quick, appropriate, just and inexpensive way of settling dispute can be implemented properly. Comparative study is conducted to find out the dispute classification in international law as well as several countries, inter alia China, Japan and Kazakhstan. Comparing the arrangement of industrial relations disputes in Indonesia and several countries including China, Japan, and Kazakhstan, it was found that each country has a different rules and regulation, including its procedure, and the assessment of industrial dispute resolution objects. The condition in Indonesia, China, Japan, and Kazakhstan, do have something in common where industrial relations disputes settlement can be resolved first through a non-litigation procedure before entering the litigation procedure. However, in terms of classification of disputes, generally the international law, including China, Japan and Kazakhstan only classify the disputes in more simple way, namely individually or as collective dispute. Hence, the ideal concept can be offered to Indonesia is simplification or even elimination of classification of industrial relation is necessary to be done in order to provide an effective and efficient

dispute settlement through Court by implementing the principle of quick, appropriate, just and inexpensive way of settling dispute as *ius constituendum*.

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