

DISPUTES SETTLEMENT OF INDUSTRIAL RELATIONS IN INDONESIA

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ABSTRACT

Background of Studied In December 2003, Indonesia passed the final piece of legislation in its labour law reform program. One month later, this received presidential assent and was introduced as Act Number 2 of 2004 on Industrial Relations Disputes Settlement. To allow for the necessary preparations for the transition, this law came into effect in January 2006. This Act repealed the 1957 regulation on Industrial Dispute Settlement and Law Number 12 of 1964 on Termination in Private Enterprises, whereby disputes between workers and employers were to first be reported to the Ministry of Manpower and Transmigration. Under the former system, an officer from the the Ministry of Manpower and Transmigration would mediate the matter or refer it to compulsory arbitration by a Local Labour Dispute Resolution Committee. Appeals were then sent to the Central Labour Dispute Resolution Committee in Jakarta. These Committees consisted of the Ministry of Manpower and Transmigration officials, and representatives from employers and the AllIndonesia Workers' Union. The Committees operated through an informal process, but had the authority to make legally binding decisions. There were no time limitations on the settlement of disputes before the Committees and individual workers did not have legal standing to bring individual disputes to the Committees. The Indonesian Minister of Manpower could veto all decisions. Disputes are to be resolved by a range of methods, including: • Bipartite negotiation; • Mediation; • Arbitration; • Determination by a panel of judges of the Industrial Tribunal; and • Appeals to the Supreme Court. ACT No.2 of 2004 Page | 18 The Industrial Dispute Settlement Law in its present form may go a long way to assisting in the development of a fair and effective labour dispute settlement system in Indonesia. Methodology of normative juridical deduction, the judicial approach.

Keyword: disputes settlement, industrial relations, labour, employment

INTRODUCTION

The Administrative Court extended its jurisdiction (under Act Number 5 of 1986) to hear appeals from the P4P. This resulted in an influx of appeals, many of which were, in turn, appealed to the Supreme Court. Act Number 2 of 2004 Page | 3 At the time of passing the Disputes Settlement of Industrial Relations Law, it was met with much broader public support than the Manpower Law. Stakeholders were content that the judges in the IRC would be able to bring both legal and industrial relations expertise to the cases, unlike in the *Local Labour Dispute Resolution Committee*, *Central Labour Dispute Resolution Committee* and the Administrative Court. Employers and unions were pleased that the initiative would curb government intervention in industrial relations and remove the right of government officials to be involved in issuing binding decisions. There were, however, some concerns. Legal aid providers, namely Legal Aid Institute opposed the Disputes Settlement of Industrial Relations Law on conceptual grounds—chiefly because they feared that the law would negatively impact on the role of labour inspectors to enforce the rights of workers in companies. Trade unions also feared that the new system

would be overly legalistic in nature and inaccessible to workers. Act Number 2 of year 2004 concerning Settlement of Industrial Relations Disputes, which is a jurisdiction of the Supreme Court and courts under its jurisdiction, is aimed at settling industrial disputes in fast, simple, cheap and justified manners. As we are all aware of the Industrial Tribunal is authorized and assigned to examine and decide following cases: o Rights related disputes at the first instance. o Conflict of interests at the first and final instances. o Work termination disputes at the first instance. o Disputes related with labour unions in companies at the first and final instances. Based on its tasks and authorities, we may assume that cases being handled by the Industrial Relations Court are sensitive, complicated and multi-dimensional as they are directly or indirectly related to the interests of employers and workers. If these conflicts are not handled carefully and comprehensively, they may affect the development of industrial relations and the national economy. Act Number 2 of 2004 Page | 4 In this era of globalization and transparency, the settlement of conflicts or cases involving employers and workers receive attention, not only at the domestic level but also at the international level. Industrial disputes are related to universal values prevailing around

the world. These are manifested in conventions relating to workers' interests, including discrimination issues in various aspects, perspectives and developments. Based on these facts and phenomenon, it is necessary to improve our organizations and human resources involved in handling industrial disputes so that such disputes could be resolved harmoniously and quickly through comprehensive decisions.

Statement of Problem: 1/ What is the law make for?; 2/ Interpret each article of the law?; 3/ What are the plus and mins of back article of the law?.

DISCUSSION

An industrial dispute is a difference of opinion that results in a conflict. about certain matters. An industrial dispute can occur between an employer, or an association of employers, on the one hand, and a worker or a trade union on the other. A dispute can also take place between trade unions. According to Article 2, there are four types of industrial disputes: – Disputes over rights; – Disputes over interests; – Disputes over termination of employment; and – Disputes among trade unions in the same enterprise. The Act number 2 of 2004 on Industrial Relations Disputes Settlement or the Disputes Settlement of Industrial Relations Law defines each of these types of disputes in more detail, and includes definitions that are relevant to identifying clearly the parties to an industrial dispute. The definition of industrial dispute refers to employers, associations of employers, workers and trade unions. These terms are also defined in the Disputes Settlement of Industrial Relations law. It is important to examine these definitions, as it should be assumed that only those parties that meet them can be parties to industrial disputes within the meaning of the Disputes Settlement of Industrial Relations Law. In other words, they will be the only parties that can have access to the dispute settlement system. Thus:

1.1. Employer Means : • An individual, partnership or legal body that runs an enterprise that he, she or it owns; • An individual, partnership or a legal body that independently runs an enterprise that he, she or it does not own.; and • An individual, partnership or a legal body that is situated in Indonesia representing an enterprise that domiciles outside Indonesia. Act Number 2 of 2004 Page | 6

1.2. Enterprise Means any form of business, whether or not it has separate legal status, that employs workers., whether or not it seeks to make a profit, and whether or not it is owned by an individual, a partnership, a legal person, or the state.

1.3. Trade Union Means a workers. organisation that is independent, free, democratic, and responsible.. It may be, but need

not be, limited to a singlethe enterprise. The definition includes a federation or a confederation of trade unions.

1.4. Worker Means a person .who is part of a workforce in an enterprise or an industry and who works within the framework of an employment relationship by receiving wages.

1.5. Social Undertakings and Undertakings Other Than Enterprises The Industrial Dispute Settlement Law or Disputes Settlement of Industrial Relations Law will also cover disputes that arise in social undertakings and undertakings other than enterprises which have administrators and which employ people and pay them wages.

2. Interpret each article of the law ?

2.1. The meaning of Industrial Dispute Industrial Relations, meaning the interlinkage of interests between workers/labourers and employers, have the potential of giving rise to differences of opinion and even disputes between the two sides. An industrial dispute is .a difference of opinion that results in a conflict. about certain matters. An industrial dispute. can occur between an employer, or an association of employers, on the one hand and a worker or a trade union on the other. A dispute can also take place between trade unions (Articel. 1) Act Number 2 of 2004 Page | 7

2.2. The subject matter of an industrial dispute a. A dispute over rights is one that .arises because the rights that have been specified and acknowledged and whose exercise has been pledged in work agreements, enterprise rules and regulations, collective work agreements, collective deals or statutory laws are not fulfilled.(Article 2 Letter a) b. A dispute over interests is one .that arises because of the absence of mutual understanding concerning changes to employment requirements which have been determined in work agreements or enterprise rules and regulations or collective work agreements. Thus, a dispute about interests is different from a dispute about rights. While a dispute about rights is about what conditions are and how to apply them, a dispute about interests is about what rights should be.(Article 2 Letter b) c. A dispute over termination of employment is one .that arises because of the absence of mutual understanding concerning the termination of an employment relationship performed by either side. (Article 2 Letter c) d. An inter-trade union dispute means one arising between trade unions that operate in the same enterprise over .absence of mutual understanding concerning the implementation of trade union rights and obligations. The matters about which unions might be in dispute would appear to be membership and the right to represent workers, both in negotiating collective work agreements and in seeking the resolution of industrial disputes. .(Article 2 Letter d)

2.3. Dispute settlement principles and procedures a. The principle in dispute resolution is

the parties must try to resolve their disputes by bipartite negotiation before trying other methods (Article. 3) Act Number 2 of 2004 Page | 8 b. The Law Industrial Dispute Settlement also create an important new institution: the Industrial Tribunal. The Tribunal will have jurisdiction over all types of disputes. However, not all disputes will reach the Tribunal the same way. Disputes over rights that cannot be settled by the parties themselves are to be resolved by the Industrial Tribunal. The parties may agree to attempt to settle other types of disputes (disputes over interests, over termination of employment or between trade unions) by mediation or arbitration. If the parties cannot agree to try to settle a dispute by mediation or arbitration, or if the dispute is not settled by these mechanisms, then either or both of the parties may refer it it may be referred to an industrial tribunal for settlement by either or both of the parties (Article 4 and 5). 2.4. Bipartite dispute settlement All parties to industrial disputes must attempt to settle their disputes directly. This is referred to in the Disputes Settlement of Industrial Relations Law as .bipartite negotiation., (Article. 3) and also as .bipartite industrial dispute settlement (Article. 6). The latter term means .a negotiation in which both sides shall deliberate to reach a consensus. (Article. 6). If the parties reach an agreement during mediation they must sign a written agreement and inform their mediator (Article. 13(1)). Where no agreement is reached the mediator must issue a written recommendation that must be sent to the parties within 10 days (Articles. 13(2) and (3)). The parties then have a further 10 days in which to advise the mediator whether they accept the recommendation (Article. 13(4)). They are presumed to have rejected the recommendation it if they do not respond to it (Article. 13(5). Act Number 2 of 2004 Page | 9 2.5. Arbitration of disputes The parties to an industrial dispute (other than a dispute over rights) may agree in writing to refer it to industrial arbitration (Article. 17). .Industrial arbitration. means a method of negotiating a settlement outside the Industrial Tribunal, based on an arbitration agreement (Article. 1(12)). An industrial arbiter is a person (or group of persons) chosen by the parties or appointed by the Minister to determine how such a dispute (other than a dispute over rights) should be settled (Article. 1(13)). The parties may only choose an arbiter who is registered as such at a government agency responsible for manpower labour affairs (Article. 19), in accordance with the qualifications specified in Article 20. These include comprehensive knowledge of relevant laws (Article. 20(d)). The Minister is to make regulations concerning .registration procedures, membership and working procedures. for industrial arbiters (Article. 27).

The parties must agree on the appointment of the arbiter, (Article. 18) and refer their dispute to the arbiter in writing (Article. 17(2)). The written reference must contain certain specified information, as it will constitute the basis for the arbitration it self. The parties must identify, for example, the problems that led to the dispute, and their .willingness to totally submit the case to the industrial arbiter, to trust his judgment and let him decide the arbitration process or procedures that are necessary to settle the dispute. (Article. 17(3)). If the parties cannot agree on the appointment of an arbiter they may apply to the Industrial Tribunal to have one appointed (Article. (21)). If the parties agree to refer the dispute to industrial arbitration, it cannot be transferred to the Tribunal for determination (Article. 26). Act Number 2 of 2004 Page | 10 The decision of the arbiter must comply with certain formalities (Article. 22), and must be made according to .justice, valid laws, conventions, statutory rules and regulations. (Article. 24). Once made, the decision is legally binding on the parties, and final and permanent (Article. 23(1)). A decision of an arbiter may be enforced by lawsuit filed in the nearest State Court. The State Court does not have jurisdiction to reconsider the arbitration outcome, that is, to review it on the merits, and must make its order within 30 days of the application (Article. 23). There are some grounds in which the parties will be able to seek review of an arbiter.s decision in the Supreme Court (Article. 25(1)). These include:

- The use of fake documents during the examination;
- The concealment of important documents .that should have been used as deciding factors.;
- Where a decision is based on the deceit of one of the parties during the examination;
- Where a decision is made beyond the power of the industrial arbiter (presumably to be determined in accordance with the Ministerial decision on working procedures for arbiters, the terms of the written agreement and the general injunction to arbiters to make their decisions according to law);
- and • Where a decision is contrary to .statutory legislation, public order or morality.. The Supreme Court may to decide whether to review an arbiter.s decision, so it would appear that the right of review is not automatic (Article. 25(2)). If the Supreme Court does agree to review a decision, then it will determine the consequences of a partial or complete change to the decision (Article. 25(2)). The Supreme Court has 30 days in which to decide whether it will review an arbiter.s decision (Article. 25(3)). Act Number 2 of 2004 Page | 11 2.6. The Industrial Tribunal The Industrial Tribunal is to be a new judicial dispute resolution institution, with links to the courts. It is often described, in fact, as a Labour Court.. Specifically, the Tribunal will be invested with .judicial power within the scope of

the general judicature that has the authority to examine and decide the settlement of an industrial dispute. (Article. 1(14)). The Tribunal will have first and final jurisdiction in disputes over rights, and inter-trade union disputes (Articles. 53 (a) and (d)). It will have initial jurisdiction in disputes over interests, and disputes relating to termination of employment (Articles. 53 (b) and (c)). Decisions of the Industrial Tribunal in these cases may be the subject of appeal to the Supreme Court (Articles. 71). Membership of the Tribunal will include ad-hoc judges. In Indonesia, which has adopted the Dutch career system for judicial appointment, this term is usually understood to mean the appointment to judicial office of persons with appropriate technical knowledge but not holding existing judicial appointment, such as lawyers, academics or other persons with relevant professional experience, for example as a senior public servant. In this case they will be chosen from panels nominated by workers. and employers. organisations. Ad-hoc judges are discussed further below. — Establishment and composition of the Industrial Tribunal The Tribunal will be established in the State Court (Pengadilan Negeri) in each provincial capital city, and also in the Supreme Court. It will also be possible for it to be established in the State Courts in certain regencies or municipalities/cities, by Presidential Decree (Articles. 28, 29). The judicial and administrative personnel of the Tribunal will include Supreme Court Justices, Judges, Ad-Hoc Judges, Deputy Registrars and Substitute Registrars (Article. 30). Judges are to be appointed to and dismissed from the Industrial Tribunal by the Chief Justice of the Supreme Court, in accordance with valid statutory rules and regulations. (Articles. 31, 32). Act Number 2 of 2004 Page | 12 — Ad-Hoc Judges Ad-hoc judges are to be appointed and dismissed by Presidential decision, based on a recommendation to the Minister by the Chief Justice of the Supreme Court (Article. 33(1)). Ad-hoc judges are to be selected from candidates submitted to the Chief Justice, with the approval of the Minister, by workers. and employers. organisations (Article. 33(2)). The qualifications for appointment include experience in industrial relations and graduate qualifications in law, as well as being a man of integrity, having an authoritative bearing. and having an unblemished behavioural record. (Article. 34). Ad-hoc judges will hold office for a five-year term, and may be re-appointed for another term (Article. 37(2)). The Industrial Dispute Settlement Law includes extensive details of the circumstances in which Ad-hoc Judges might be removed from office, whether with honour. or dishonour. (Articles. 36-39). There are also provisions to ensure the independence of Ad-hoc judges: for

example, an ad-hoc judge may not concurrently hold a wide range of other offices or positions, including membership of Parliament or head of an administrative region (Article. 36). Procedures for these matters are to be determined in a Government regulation (Article. 42). — Judicial supervision of the work of the Tribunal The Chief Judge of each State Court is to supervise the work of the Judges, ad-hoc judges and the Substitute Registrar of the Tribunal with the State Court. The Chief Justice of the Supreme Court is to carry out a similar function with respect to the Supreme Court Justices and the Substitute Registrar of the Tribunal at the Supreme Court. This supervisory power includes a power to give directions, and to issue reproofs (Article. 41(4)). These powers, however, are not to be taken to be as a reduction in the freedom of the judicial and administrative officers whose tasks are being overseen (Article. 41(5)). ACT No.2 of 2004 Page | 13 — Sub-Registries A Sub-Registry is to be established at each State Court where an Industrial Tribunal is established. Its work is to be overseen by a Deputy Registrar, assisted by Substitute Registrars (Article. 44). The main function of the Substitute Registrar will be to participate in hearings of disputes and to record what is said during court sessions of the Industrial Tribunal (Article. 49(1)). Sub-registries are generally to carry out administrative functions, including record keeping (Articles. 45-50). The records shall include records of all disputes and disputants, which are to be recorded in a disputes log (Article 45). Initially the offices of Deputy Registrar and Substitute Registrar are to be held by civil servants from the government agency responsible for overseeing manpower labour affairs (Articles. 47, 51). — Dispute settlement procedure in the Industrial Tribunal The Tribunal will operate according to the Law of Civil Procedure (Article. 54). A three-member dispute panel is to be formed by the Chief Judge of the State Court within seven days of a request for the settlement of an industrial dispute. The panel must be composed of a Judge, and two ad-hoc judges. One of the ad-hoc judges is to be selected from those nominated by workers, and the other from those nominated by employers (Article. 55). A date for hearing the dispute must be set within 7 days of the establishment of the panel (Article. 56). The panel of judges may summon witnesses or expert witnesses (Article. 57). It may also compel people to assist it in its work, including by requiring the production of books and documents (Article. 58). The law makes certain provision for the hearing of matters in cases where parties are unable to attend (Articles 60, 62). The panel is to open its court sessions of the panel is to be public to hold its hearings in open public hearing, unless it determines otherwise (Article.

62). In determining a dispute, the Tribunal must operate in accordance with existing laws, agreements, conventions and justice. (Article. 63). It must reach its decision within 90 days Act Number 2 of 2004 Page | 14 (Article. 65). The Tribunal must read the decision in an open court, and communicate it to the parties (Articles 66-69).

a. Appeals to the Supreme Court The decision of the Tribunal has permanent legal force. Unless one of the parties appeals (in writing) to the Supreme Court within 14 days of the decision (Article. 71). Appeals are to be heard by Industrial Tribunal Supreme Court Justices (Article. 74), who must determine an appeal within 30 days of its lodgement (Article. 76). Appeal procedures are to be in accordance with statutory rules and regulations (Article. 75).

3. The plus and mins of back article of the law The Industrial Dispute Settlement Law in its present form may go a long way to assisting in the development of a fair and effective labour dispute settlement system in Indonesia. Nevertheless, it is apparent that the Industrial Dispute Settlement Law has weaknesses.

3.1. The plus of back article of the law a. Article 63 : The Industrial Relations Court that reviews and adjudicates industrial relations disputes is composed of a Panel of Judges comprising 3 (three) members, namely a District Court judge and 2 (two) Ad-Hoc Judges, whose appointments are proposed by the employers organization and workers/labour organization. b. Article 56 (b & d) : The decision of the Industrial Relations Court arriving at the District Court level concerning disputes of differing interests and disputes between trade unions within one corporation cannot be filed as an appeal to the Supreme Court. Act Number 2 of 2004 Page | 15

3.2. The mins of back article of the law a. No doubt there is some incentive to engage in bipartite negotiation simply by virtue of the fact that a settlement reached this way will be legally binding (Article 8). However, there is no provision that specifies how such an agreed outcome is to be enforced, or in what jurisdiction. This is to be contrasted, for example, with the outcome of an arbitration that, pursuant to Article 23, may be filed for enforcement in the nearest State Court. b. A further weakness is that there is neither a positive obligation to engage in bipartite negotiations in good faith, nor a negative incentive in the form of consequences for failing to do so. In fact, the Disputes Settlement of Industrial Relations Law specifies no consequences at all for a party that fails to engage conscientiously in bipartite negotiation. It is true that under Article 6 the parties must record the matter in dispute and also the positions taken by them during the negotiations. However, there is no provision that indicates whether a mediator, an arbiter or the Industrial Tribunal will, or even should, have

regard to the outcome of unsuccessful bipartite negotiations. It may be implicit in the obligation to record the outcome, but it is certainly not clear from the Disputes Settlement of Industrial Relations Law what is envisaged in this respect. c. The policy of the Disputes Settlement of Industrial Relations Law is clearly that disputes (other than disputes over rights) should not necessarily proceed from (unsuccessful) bipartite negotiation directly to the Industrial Tribunal. Rather, the parties should consider attempting to resolve the dispute through mediation, and/or through arbitration. As it stands, however, the parties are not obliged to engage in mediation: Article 5(2) clearly provides that the parties may elect whether to refer a dispute to mediation. If they cannot agree to do so then either or both may refer the matter to the Tribunal d. A significant drawback to the use of mediation is that there is no provision in the Disputes Settlement of Industrial Relations Law for the settlement of a dispute achieved through mediation to be legally binding. The parties must sign a written agreement and inform the mediator if they reach an agreement Act Number 2 of 2004 Page | 16 (Article 13(1)). However, there is no equivalent to Article 23(1) which unequivocally gives legally binding force to the decision of an arbiter. e. Another matter of interest concerning disputes over termination of employment is that the definition (Article 1(4)) refers to absence of mutual understanding concerning the termination of an employment relationship performed by either side in the relationship.. . Thus, it is possible for an employer to initiate a complaint about an employee.s termination of an employment relationship. This may give rise to interesting issues in respect of the remedies that the Tribunal might be able and willing to grant to employer applicants. Will the Tribunal, for example, require that an employee whothat has not completed a fixed term contract of employment to must return to that employment and complete it? Or, in that situation will it fix some other remedy? f. The institutional status of the Tribunal is not clear from the Disputes Settlement of Industrial Relations Law: is it to be a fully independent institution or, on the other hand, will it be fully integrated into the existing court system?. The very use of the term Industrial Tribunal. suggests an institution that exists separately from others, in particular from the courts. However, there are clearly significant links between the Tribunal and the existing court system. The Tribunal is to be established at the Supreme Court and at the State Court in each Provincial capital city (Articles 28, 29). The Chief Justice of the Supreme Court has the power to appoint and dismiss the judges of the Tribunal (Articles 31, 32). The Chief Justice of the Supreme Court and the Chief Judge of each State Court are to

oversee the operations of the Tribunal at the Supreme Court and each State Court, respectively (Article 41). g. The Tribunal is to have a wide jurisdiction . and in some cases a final jurisdiction. To this end it is to be invested with .judicial power within the scope of the judiciarygeneral judicature. (Article 1(14)) but it is not clear what this means, particularly as regards the extent of the Tribunal.s powers, the orders it can make and remedies it can order. It may be that the fact that the Tribunal is to operate according to the law of Civil Act Number 2 of 2004 Page | 17 Procedure (Article 54) sheds some light on this question, but the text of the PPHI Law does not.

CONCLUSION

The labour dispute settlement system in the Industrial Dispute Settlement Law. It has also summarised the sources of individual and collective employment conditions labour laws in Indonesia. This has been necessary in order to give a full account of the wide range of subject matter that may be brought within the jurisdiction of the dispute settlement mechanisms. Those mechanisms are intended to be used to settle four types of disputes: • Disputes over rights; • Disputes over interests; • Disputes over termination of

employment; and • Inter-trade union disputes. Disputes over rights might involve conditions that are provided in individual work agreements, collective work agreements, enterprise rules and regulations, and various statutes. The rights that derive from statute cover important matters including wages, leave, occupational health and safety, the right to form and join trade unions, and the right to strike. • Disputes are to be resolved by a range of methods, including: • Bipartite negotiation; • Mediation; • Arbitration; • Determination by a panel of judges of the Industrial Tribunal; and • Appeals to the Supreme Court. ACT No.2 of 2004 Page | 18 The Industrial Dispute Settlement Law in its present form may go a long way to assisting in the development of a fair and effective labour dispute settlement system in Indonesia. Nevertheless, it is apparent that the Industrial Dispute Settlement Law has weaknesses, some of them significant. Some of these derive from failure to implement the best international standards for labour dispute resolution mechanisms. Other difficulties derive from the general unreliability of the public sector . including the judiciary . in Indonesia, in particular because of problems of widespread corruption in government and the courts.