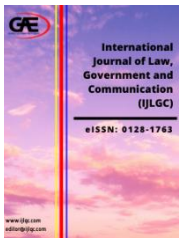
International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 5 Issue 20 (September 2020) PP. 87-93
DOI 10.35631/IJLGC.520006



INTERNATIONAL JOURNAL OF LAW, GOVERNMENT AND COMMUNICATION (IJLGC)
www.ijlgc.com

REVITALIZING AD-HOC JUDGES IN DECIDING INDUSTRIAL RELATIONS DISPUTES IN THE INDUSTRIAL RELATIONS COURT TO BRING ABOUT JUSTICE FOR THE PARTIES

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Article Info:

Article history:
Received date: 01.08.2020
Revised date: 14.08.2020
Accepted date: 04.09.2020
Published date: 15.09.2020

To cite this document:

Jatmiko, P. (2020). Revitalizing Ad-Hoc Judges in Deciding Industrial Relations Disputes in the Industrial Relations Court to Bring About Justice for the Parties. International Journal of Law, Government and Communication, 5 (20), 87-93.

DOI: 10.35631/IJLGC.520006.

Abstract:

The Industrial Relations Court is a special court established within the district court that has the authority to examine, hear, and give decisions on industrial relations disputes. The purpose of writing this paper is to find out the existence of the Ad Hoc Judge in deciding cases in the Industrial Relations Court and to know the recruitment system of the Ad Hoc Judge in the Industrial Relations Court in order to bring about justice for the parties (employers and workers/laborers). From the results of the writing, it can be obtained that the Revitalization of Ad Hoc Judges in resolving industrial relations disputes so far has not been independent and siding with one of the litigants and does not act fairly, because the background of the Ad Hoc Judge was proposed by trade unions or employer associations. This contradicts the theory of justice, industrial relations theory, and the theory of independence and contradicts universal principles that apply in the world.

Keywords:

Ad Hoc Judges, Industrial Relations Court, Justice

Introduction

Background

After the amendment to the 1945 Constitution of the Republic of Indonesia in Indonesia, the diversification of the functions of the powers of the developing State is broad, one of the functions of the developing State's power is that more and more specialized judicial institutions / Ad Hoc are established, one of which is the court of relations industrial sector established under Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement (PPHI Law). According to the 1945 Constitution article 24 paragraph (1) *"Judicial power is an independent power to administer justice to enforce law and justice"*.

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According to Law Number 48 of 2009 concerning Judicial Power, especially Article 2 paragraph (1) to paragraph (4):

(1) The trial was conducted "FOR THE SAKE OF JUSTICE UNDER ONE ALMIGHTY GOD".
(2) The State Court implements and enforces law and justice based on Pancasila
(3) All courts in the entire territory of the Republic of Indonesia are State courts that are regulated by law.
(4) *Courts are carried out simply, quickly and at a low cost*

Industrial Relations Court is a special court established within the district court which has the authority to examine, hear, and give decisions on industrial relations disputes.

Even though the Industrial Relations Court is located in a district court, not all district courts can hear an Industrial Relations Dispute (PHI) (Sehat, D., 2004). The large number of Industrial Relations disputes between workers and employers is a reflection of the unfair industrial relations model.

The settlement of Industrial Relations disputes in the Industrial Relations Court involves the role of the Ad Hoc Judge, in Indonesia at this time it cannot be separated in the justice system in Indonesia. Ad Hoc Judges are used in special courts, such as criminal acts of corruption, commercial trials and industrial relations courts and others.

Ad Hoc Judges are judges who are appointed from outside career judges who are deemed to meet professional requirements, are dedicated and have high integrity, live up to the ideals of the rule of law and welfare state which have core justice, understand and respect human rights and basic human obligations.
The Ad Hoc Judge in the Industrial Relations court is a person who understands and understands current labor law well. The goal, because this labor law has specific characteristics, it requires special people who understand labor issues.

The existence of an Ad Hoc Judge in the industrial relations court needs to be considered and assessed regarding his position and role as a judge in giving decisions on industrial relations disputes, so that decisions issued are in line with and in accordance with applicable laws and regulations (Putra, P.R.A., n.d).

With this background, the author focuses on "Revitalizing Ad-Hoc Judges in Resolving Industrial Relations Disputes in Industrial Relations Courts to Achieve Justice for the Parties", this includes the recruitment system of PHI Ad-Hoc Judges who have been in effect and proposals for improvement in the system of regulation and recruitment of PHI Ad-Hoc Judges in the future in order to realize the fairness of the parties.

Formulation Of The Problem

In this paper the main issues are as follows:

1. How is the presence of the Ad Hoc Judge in deciding cases in the Industrial Relations Court in relation to his background?
2. What is the recruitment system for Ad Hoc Judges to bring justice to the parties in the Industrial Relations Court?

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Discussion

The Existence Of An Ad Hoc Judge In Deciding Cases In The Industrial Relations Court Is Related To His Background

Ad Hoc Judges of PHI are judges as the duty bearers of judicial power administrators under the Supreme Court of the Republic of Indonesia from the non-career path. However, in practice there are still differences in the treatment of rules between the Ad Hoc Judge PHI and the Career Judge, this shows evidence of inequality before the law. Ad Hoc Judges The PHI is essentially the same as Career Judges, it's just that the recruitment path is different from Career Judges.

Many factors can influence the attitudes and legal culture of judges, such as the legal system, politics, education, professionalism and ethics that greatly affect the legal culture of judges (Panggabean, R.M., n.d).

Judicial reform has made a lot of progress in the justice system. One form of judicial reform is the presence of Ad Hoc judges. Judging from its history, the form of Ad Hoc judges is participation from outside the judiciary sitting as a judge together with career judges for special purposes has actually been carried out before in Indonesia (Tresna, R., 1978).

During the Dutch colonial era, a district court was called a *landraad (*Soepomo, R., 1997), an Ad Hoc judge known as a *li landraad*. The judge in question is not a career judge but a member of the public who sits with a career judge in adjudicating a case. Judge Ad Hoc is also known in the special court for tax matters *'Raad van Beroepvoor Belastingzaken'.*

Ad Hoc Judges at the Industrial Relations Court (PHI) have an Ad Hoc judge concept that is slightly different from other specialized courts.

The difference between the Ad Hoc Judges in the PHI and other special courts is in the terms of their appointment. Ad Hoc Judges are appointed on the proposal of trade unions or trade unions and company organizations. In the panel of judges the hearing consists of two Ad Hoc Judges, each proposed by a trade union and company organization and one career judge as the chair of the panel. Requirements as an Ad Hoc Judge in PHI in addition to having general requirements are also determined to have a law degree education and have experience in the field of industrial relations for at least five years (Putra, P.R.A., n.d.). Judges' positions as state officials are regulated in Article 19 of Law Number 48 of 2009 concerning Judicial Power, which states *"Constitutional Justices and Judges is State officials who exercise judicial power as stipulated in the Law"* and Article 31 which states *"Judges under the court The Supreme Court is a state official who exercises judicial power that is within the judiciary under the Supreme Court."*

Whereas in Law Number 5 of 2014 concerning State Civil Apparatuses (ASN Law) Ad Hoc Judges are not domiciled as State officials. The position of the Ad Hoc Judge was strengthened by the Decision of the Constitutional Court Number 32 / PUU-XII / 2014 regarding the review of Law Number 5 of 2014 concerning State Civil Apparatus against the 1945 Constitution of the Republic of Indonesia.

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The industrial relations court is a special court within the general court environment (Article 55 of the PPHI Law). For the first time in 2004 an industrial relations court will be established in every district court in each provincial capital city whose jurisdiction covers the province concerned. As for regencies / cities, especially those that are densely industrial, based on a presidential decree, an industrial relations court should be immediately formed at the local district court. The absolute authority or absolute competence of the industrial relations court is referred to in Article 56 of the PPHI Law, namely that the industrial relations court has the duty and authority to examine and decide:

a. At the first level regarding disputes over rights;
b. At the first and last level regarding disputes of interest;
c. At the first level regarding disputes over termination of employment
d. At the first and last level regarding disputes between trade unions / labor unions in a company.

The industrial relations court has the duty and authority to examine and hear industrial relations cases and disputes conducted by a panel of judges with 3 (three) members, consisting of 1 (one) career judge and 2 (two) Ad Hoc judges.

However, in Article 63 of Law Number 2 of 2004 which reads:

(1) The Ad-Hoc Judge for the Industrial Relations Court was appointed by a Presidential Decree on the proposal of the Chief Justice of the Supreme Court.
(2) Candidates for the Ad-Hoc Judge as referred to in paragraph (1) shall be submitted by the Chief Justice of the Supreme Court from a name approved by the Minister at the suggestion of a trade union / labor union or employers' organization.
(3) The Chief Justice of the Supreme Court proposed the dismissal of the Ad-Hoc Judge for Industrial Relations to the President.

Article 67 paragraph 1 (f) of Law Number 2 of 2004 which reads:

(1) Ad-Hoc Judges for the Industrial Relations Court and Ad-Hoc Judges for Industrial Relations at the Supreme Court are honorably dismissed from their positions because:
(2) at the request of the employers' organization or workers' / laborers' organization which proposes; or.

And Article 70 of Law No. 2 of 2004 which reads:

(1) The appointment of an Ad-Hoc Judge in the Industrial Relations Court is done by taking into account the needs and available resources.
(2) For the first time, the appointment of Ad-Hoc Judges in the Industrial Relations Court at the District Court is at least 5 (five) people from the elements of the trade union / labor union and 5 (five) people from the elements of the employers' organization.

From Article 63, 67 paragraph 1 (f) and Article 70 of Law No. 2/2004 concerning the Industrial Relations Court mentioned above, in the opinion of the author the recruitment of an Ad Hoc Judge will arise when in practice in the industrial relations court, the judge has the authority to decide a case is a judge appointed (proposed) by a trade union/trade union of an employer organization and also honorably terminated by a trade union/labor union, the employers' organization; in this case the judge is chosen by the parties who clearly have an interest. This is what can lead to the process in the Industrial Relations Court not achieving justice.

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The three articles above conflict with the concepts of justice and legality, proposed by Hans Kelsen. The concept of justice proposed by Hans Kelsen is First, about justice and peace. Justice derived from irrational ideals. Justice is rationalized through the knowledge that can manifest in the interests of an eventual cause a conflict of interest. The settlement of the conflict of interest can be achieved through a record that satisfies one of the interests at the expense of the interests of the other or by trying to reach a compromise towards a peace for all interests (Manssyhur, K., 1985). *Second*, the concepts of justice and legality. To uphold on the solid foundation of a certain social order, according to Hans Kelsen, the meaning of "justice" means legality. A general rule is "fair" if it is actually applied, while a general rule is "unfair" if it is applied to one case and not applied to other similar cases (Manssyhur, K., 1985).

Recruitment System for Ad Hoc Judges to Bring Justice to the Parties in the Industrial Relations Court

Based on Article 63, 67 paragraphs (1), and Article 70, regarding the recruitment of Ad Hoc Judges the Industrial Relations Court in practice will cause problems if the recruitment system is not neutral regardless of the request of the company organization and trade unions.

According to Lawrence Meir Friedman, the success or failure of law enforcement depends on: Legal Substance, Legal Structure / Legal Institutions and Legal Culture.

First: The Substance of Law: In Lawrence Meir Friedman's theory this is called the substantial system that determines whether or not the law can be implemented. Substance also means products produced by people who are in the legal system that includes the decisions they issued, the new rules they draft.

As a country that still adheres to the Civil Law System or Continental European system (although some laws and regulations have also adopted the Common Law System or Anglo Sexon) it is said that law is written regulations while unwritten regulations are not declared law. This system affects the legal system in Indonesia. One effect is the principle of Legality in the Criminal Code. In Article 1 of the Criminal Code determined "there is no criminal act that can be punished if there are no rules that govern it". So that an action can or is not subject to legal sanctions if the act has already been regulated in a statutory regulation.

As stated by Bagir Manan that the role of judges is very important in law and justice enforcement, namely: First, through the judge's decision, the provisions of abstract laws become a reality. Second, the law not only states (sets) laws for litigants, but also creates generally accepted laws. Third, the judge guarantees the actualization of the law, including directing the legal development. Based on the identification of judges' duties as independent law enforcement and justice, their existence, position and function are different from those of other law enforcers who are limited to law enforcement or law enforcement. Judges have different specifications in terms of giving justice, because judges are prohibited from rejecting a case even though the law does not exist or is unclear so that they are given the authority to carry out legal formation. A judge is considered to be aware of his law so he must not refuse to examine and try an event that is presented to him. This is regulated in Article 10 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power that the court may not refuse to examine and try a case that is filed on the pretext that the law is not clear or unclear, but is obliged to examine and try it.

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As an Example, the second decision of the Industrial Relations Court Number 272 / Pdt.Sus-PHI / 2018 / PH.JKT.PST, dated January 17, 2019, in the case between R. Mira Iswahyuni, as Plaintiff against PT. CHANDRA SAKTI, as Defendant in subject matter:

1. Declare Plaintiffs Lawsuit Not Acceptable *(Niet Ontvankelijk Verklaard)*
2. Punish the Plaintiff to pay the court fee in the amount of IDR.566,000 (five hundred sixty-six thousand rupiah).

In the author's opinion, PHI Decision Number 272 / Pdt.Sus-PHI / 2018 / PH.JKT.PST, dated January 17, 2019 above, which in its exception rejected the exception of the Defendant because the judge's legal considerations were incorrect or contradictory to the applicable legal provisions, because mutations of different legal entities are not justified (they should first terminate their employment), even though they are still within the scope of the holding company. This often happens in practice or existing phenomena. Although there was a dissenting opinion from one of the PHI Ad-Hoc Judges.

Thus, it can be concluded that the existence of an Ad Hoc judge cannot be neutral (independent), whereas in Article 28 letter D paragraph (1) of the 1945 Constitution reads *"Everyone has the right to recognition of guarantees, protection and certainty of fair law and fair treatment. same before the law"*. Article 28 D paragraph (2) of the 1945 Constitution reads *"Every person has the right to work and to receive fair and appropriate compensation and treatment in a work relationship or is contrary to the principle or principle of impartiality."*

The two articles do not differentiate between people / citizens, workers and employers in employment or industrial relations to receive fair and proper treatment and legal certainty.

The main purpose of labor law is to protect the interests of workers. This goal is based on the basic philosophy that workers are always a sub-coordinator of employers, therefore labor laws are formed to neutralize these inequalities. So that when the Act is unable to consider the Subordination, then it happens because of a substantial failure and interests in the field which are more favorable to employers than workers.

Therefore, a revision of the Ad Hoc Judge Industrial Relations Court recruitment system is needed, i.e. Act No. 2/2004 concerning Settlement of Industrial Relations Disputes in order to be able to realize the judicial process of the Industrial Relations Court in the future in order to bring about justice for the parties (employers and workers/laborers) and are not impartial to employers or workers.

Closing

Conclusions

From Article 63, 67 paragraph 1 (f) and Article 70 of Law No. 2 of 2004 concerning the Industrial Relations Court, the problem of recruiting Ad Hoc Judges will arise when in practice in the industrial relations court, the judge authorized to decide the case is the judge who appointed (proposed) by the trade union / trade union of the employers 'organization is also honorably terminated by the trade union / labor union, the employers' organization; in this case the judge is chosen by the parties who clearly have an interest. This is what can lead to the process in the Industrial Relations Court not achieving justice.

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Suggestions

In the process of recruiting Ad Hoc judges, the Industrial Relations Court should be carried out with good coordination between existing institutions, namely the Judicial Commission and the Supreme Court.

In the future, it is hoped that the recruitment of Industrial Relations Ad Hoc Judges will be more transparent and cleaner so that they can recruit the best people in the recruitment of existing judges so as to bring about justice in industrial relations justice.

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