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Considering the Application of Mediation Characteristics for Optimizing Dispute Resolution in Industrial Relations: a Worthwhile Endeavor?

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Abstract
This article aims to discuss further the importance of the characteristics of non-litigation dispute resolution through mediation in resolving industrial relations disputes. This research is descriptive with a normative research type, using a statutory approach and data collection using literature study, then the data is analyzed qualitatively. The results obtained from this research are that each type of dispute resolution has its characteristics. One of the main reasons why disputes cannot be resolved through arbitration is limited authority. Apart from that, the lack of information, abilities, and knowledge of the parties regarding conciliation and negotiation is the cause of these problems. Therefore, mediation is chosen due to its distinctive characteristics compared to other non-litigation resolutions, such as the mediator's role in assisting the parties, the absence of decision-making authority, the mediation process focusing on the future, and fostering the creation of win-win solutions.

Keywords:
Dispute Resolution;
Industrial Relations;
Mediation Characteristics.

A. INTRODUCTION

The worker-employer relationship is intricately tied to fulfilling the obligations and entitlements outlined in the employment contract. This document governs crucial aspects of the partnership, including work hours, compensation, time off, and alignment on company policies.[1] It is not uncommon for disputes to arise in the employment relationship due to the inherent power imbalance between workers and employers.[2] It is worth noting that in cases of disputes arising in the employment relationship,

[1] Kadek Agus Sudiarawan and Nyoman Satyayudha Dananjaya, "Konsep Penyelesaian Perselisihan Hubungan Industrial Berbasis Pemberdayaan Sebagai Upaya Peningkatan Perlindungan Hukum Terhadap Buruh Dalam Mencari Keadilan," *ADHAPER: Jurnal Hukum Acara Perdata* 3, No. 1 (2018): 17-37, https://doi.org/10.36913/jhaper.v6i1.100, p. 18.

[2] Desak Putu Dewi Kasih *et al*., "Classification of Industrial Relations Disputes Settlement in Indonesia: Is It Necessary?," *Hasanuddin Law Review* 8, No. 1 (2022): 79-94, http://dx.doi.org /10.20956/halrev.v8i1.3502, p. 83.

both workers as individuals (*naturlijke persoon*) and employers as legal entities (*rechts persoon*) are recognized as legal subjects. It is important to ensure that an amicable and fair resolution is reached for both parties involved in such disputes. Maintaining a balanced approach would be crucial in ensuring a harmonious legal relationship between the two parties which occurs within the scope of employment.[3] There has been a noticeable increase in industrial relations cases in recent times. The number of cases has risen from 1,649 in 2021 to 2,964 by December 2022, which is a cause for concern for the need to find constructive solutions that will help to improve workplace relations and create a more harmonious and productive work environment for all stakeholders involved.[4] The unmistakable rise in industrial relations disputes in Indonesia over a year calls for immediate and decisive action from the government to resolve these issues. The government's intervention and involvement are essential to address the matter with confidence and bring about a satisfactory outcome for all parties involved.

Indonesia must prioritize the prompt settlement of industrial relations disputes as a crucial step towards achieving social welfare. Resolving employment cases is one way to demonstrate progress in this pursuit. The state's commitment to upholding the welfare of its citizens in the workplace is enshrined in the 1954 Constitution of the Republic of Indonesia. (hereinafter referred to as the 1945 UUDNRI) in Article 27 paragraph (2). The state plays a crucial role in regulating employment relations, as enshrined in the provisions of Law Number 13 of 2003 concerning Employment (hereinafter referred to as the Employment Law) *jo*. Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as the Job Creation Law).

Industrial relations disputes pose serious challenges that need to be addressed. These disputes can lead to several problems such as interest disputes, termination disputes, rights disputes, and disputes between workers and labor unions in the company. The impact of industrial relation disputes on workers can be severe, including loss of wages, loss of work, and even mental suffering. Therefore, it is crucial to resolve such disputes promptly to ensure a safe and secure working environment for all employees. To maintain the rights of workers and employers, it is crucial

[3] Wawan Muhwan Hariri and Beni Ahmad Saebani, *Pengantar Ilmu Hukum*, 1st ed., (Bandung: Pustaka Setia, 2014), p. 210.

[4] Badan Perencanaan dan Pengembangan Ketenagakerjaan, "Kasus Perselisihan Hak Di Tahun 2022" (Jakarta, 2022), http://old.satudata.kemnaker.go.id/hi/hi_prov/perselisihan, p. 1.

to address employment relationship disputes promptly through dispute resolution efforts. This is regulated by Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes (PPHI Law), which aims to promote harmonious, dynamic, and just industrial relations. Dispute resolution can begin with out-of-court settlement efforts such as negotiation, mediation, conciliation, or arbitration. If necessary, litigation can proceed through the Industrial Relations Dispute Court and the Supreme Court.

When it comes to resolving disputes related to industrial relations, parties involved can opt for non-litigation dispute resolution. This process offers various options that can help in reaching a mutually acceptable solution. However, choosing dispute resolution through arbitration and conciliation can require significant costs. If the parties decide to resolve their dispute through arbitration, they will need to appoint an arbitrator and pay for the arbitrator's honorarium and trial costs in advance. On the other hand, conciliation can be done at the Manpower Office of the City/ Regency where the dispute has arisen. Under Article 26 of the PPHI Law, it is stipulated that the payment of the conciliator's honorarium should not be the responsibility of the state. Instead, the parties involved may bear the cost of the conciliator's services. As a result, the plaintiff may be required to pay the costs upfront at the beginning of the trial to cover the expenses incurred in this regard.

Resolving industrial relations disputes can be a challenging task, but it provides an opportunity for workers and employers to collaborate and find mutually beneficial solutions. By embracing open communication and a willingness to understand each other's perspectives, parties can establish a constructive dialogue and work towards resolving their differences.[5] The various non-litigation methods for resolving disputes such as negotiation, mediation, conciliation, and arbitration have their strengths and limitations. In Indonesia, these approaches are governed by specific provisions, particularly concerning employment. This research aims to delve deeper into the characteristics of non-litigation dispute resolution in the context of industrial relations disputes, building on existing knowledge and insights.

This research builds upon two prior research projects, First, specifically, the work of Julkipli and Santoso entitled "*The Role of Mediators in Efforts to Settle*

[5] Sukmajati Fajar and Rahayu Subekti, "Aspek Keadilan Pancasila Dalam Mediasi Perselisihan Hubungan Industrial Pada Dinas Perindustrian Dan Tenaga Kerja Kabupaten Sukoharjo," *Jurnal Komunikasi Hukum* 7, No. 2 (2021): 550-558, https://doi.org/10.23887/jkh.v7i2.37987, p. 552.

Industrial Relations Disputes Through Mediation." The findings of this research highlight the significant role that mediators play in resolving disputes. This includes facilitating meetings between the disputing parties, leading productive discussions, and ensuring that all parties understand the guidelines and parameters of the mediation process. Additionally, mediators are instrumental in managing the emotions of those involved and ultimately working towards a quick and effective resolution that encourages all parties to express their views openly and honestly.[6] Second, the work authored by Yetniwati, Hartati, and Meriyani entitled "*Legal Reform for Settlement of Industrial Relations Disputes by Mediation*", according to the research the PPHI Law's mediation procedures incorporate implementing regulations. Additionally, parties can select an independent mediator (outside of the labor service mediator) as long as both parties agree and adhere to the principles of deliberation and consensus.[7] Based on previous research, there is a similarity in the topic, namely relating to mediation in industrial relations dispute resolution in general, but different in research focus. The focus of this research is more on the characteristics of industrial relations resolution through non-litigation mechanisms, especially mediation.

Apart from these two previous research, the general objective is an effort to develop legal knowledge, especially in terms of industrial relations. This research is a continuation of previous research entitled "*Industrial Relation Problematics During the Covid-19 Pandemic: Assessing the Effectiveness of Mediation as Dispute Settlement Process*" written by Dananjaya, et al, with the results of this study explaining that during the Covid-19 pandemic rights disputes and termination of employment disputes were mostly caused by many companies not operating during the pandemic, financial problems with companies, and the company's inability to pay workers' rights under the provisions of applicable laws and regulations.

The implementation of resolving industrial relations disputes through mediation has shown quite good effectiveness, but in its implementation, there are still various (practical) obstacles, so it needs to be strengthened by prioritizing the implementation of mediation with direct presence, strengthening regulations regarding summoning of parties, the authority of mediators to enter the company,

[6] Julkipli, A. and Santoso, I.B., "Peran Mediator Dalam Upaya Penyelesaian Perselisihan Hubungan Industrial Melalui Mediasi", *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora 5*, No. 2 (2023), pp. 257-260.

[7] Yetniwati, Y., Hartati, H. and Meriyani, M., "Reformasi Hukum Penyelesaian Perselisihan Hubungan Industrial Secara Mediasi", *Jurnal Dinamika Hukum 14*, No. 2 (2014), pp. 250-261.

and supervising the results of the implementation of mediation, organizing dispute resolution training, negotiation techniques and improving mediators periodically, educating mediators towards mastery of certain fields of knowledge, providing sufficient information to workers regarding the rights and mechanisms for resolving industrial relations disputes; and increasing the budget for implementing industrial relations mediation.[8]

Non-litigious methods of dispute resolution play a crucial role in resolving industrial relations disputes. They offer the benefits of simplicity, speed, and cost-effectiveness, sparing workers the burden of protracted legal battles and financial strain while fighting for their rights. Therefore, the objective of this research is to explore the positive aspects of the non-litigation method of resolving disputes, namely mediation, which is currently practiced within the industrial relations dispute resolution system in Indonesia. By examining its characteristics, we aim to identify ways to improve the process and promote a more effective and fair resolution.

B. RESEARCH METHODS

The research methodology employed is doctrinal legal research, which aimed at analyzing the relationship between norms and combining norm theory with legal principles. The writing direction of this research is focused on elucidating the development of knowledge related to non-litigation dispute resolution procedures in the context of industrial relations. This research is a normative research study that characterizes each non-litigation procedure type and the dispute resolution process by applying the statutory approach method. The data collection technique utilized in this study is literature review, which involves the collection of secondary data. The data analysis method used in this writing is qualitative analysis, which was carried out meticulously.

C. RESULTS AND DISCUSSIONS

1. Non-Litigation Settlement of Industrial Relations Disputes in Indonesia

Industrial relations develop according to the demands of the times and political dynamics in a country. The industrial relations principles applied in Indonesia are the Pancasila Industrial Relations principles[9], The Pancasila Industrial Relations Principles are a system of relations between actors involved in the production of goods and services (workers, entrepreneurs and

[8] Dananjaya, N.S., Longtan, S.H.I., Sudiarawan, K.A., Martana, P.A.H. And Tjung, M.S., "Industrial Relation Problematics During The Covid-19 Pandemic: Assessing The Effectiveness Of Mediation As Dispute Settlement Process", *Jurnal Bina Mulia Hukum 7* No. 1 (2022), pp. 127-141.

[9] R. Joni Bambang, *Hukum Ketenagakerjaan* (Bandung: Pustaka Setia, 2013), p. 289.

government) which are based on values which are a manifestation of Pancasila.[10] The Pancasila Industrial Relations Principles must be integrated into every step of industrial relations while upholding the philosophy of values encapsulated in the Pancasila principles. The principle seeks to establish harmonious, dynamic, and equitable industrial relations in Indonesia by giving priority to the principle of partnership. This principle mandates that workers are not to be seen as mere factors of production, but rather as partners by the entrepreneur.[11] Therefore, it is essential to resolve all employment-related problems or disputes through this principle.

There is a notion of flexibility concept which refers to the ability to promptly adjust to unpredictable market variations by anticipating potential inadequacies and ineffectiveness in the operation of market institutions.[12] One approach to promoting workplace flexibility is to offer policies that provide employees with greater control over their work arrangements. However, it's important to note that such policies typically come with the caveat that employment guarantees may not be possible, including job security, skill development opportunities, income stability, and representation through labor unions.[13] By acknowledging these trade-offs, organizations can work to find a balance between flexibility and security for their employees. In Indonesia, the concept of flexibility is synonymous with the strategy of labor informalization, outsourcing, subcontracting, work relations that do not have legal standards and mobilization of the housing industry.[14] Flexibility concept in industrial relations is a crucial concept that must align with the fundamental objectives of employment law, including justice, benefits, and legal certainty for both workers and entrepreneurs. Indonesia's industrial relations system needs to be customized to the country's philosophy and culture to ensure optimal outcomes for all stakeholders involved in the industrial relations system.

The definition of industrial relations based on the provisions of Article 1 number 16 of the Manpower Law is a system of relations formed between actors in the process of producing goods

[10] Kususiyanah, A. "Hubungan Industrial Pancasila Dalam Undang-Undang Cipta Kerja", *Invest Journal of Sharia & Economic Law* 1, No. 2 (2021), p. 45.

[11] Ahmad Hunaeni Zulkarnaen, "Masalah Rawan Dalam Hubungan Industrial dan Konsep Negara Kesejahteraan Indonesia", *Jurnal Hukum Mimbar Justitia 2*, No. 2 (2016), p. 807.

[12] Standing, G., *Global Labour Flexibility: Seeking Distributive Justice (Vol. 287)*, (London: Macmillan, 1999), p. 49.

[13] *Ibid.,* p. 167.

[14] Agus Pratiwi, "Perspektif Hukum Feminis Terhadap Aturan Fleksibilitas Pasar Tenaga Kerja di Indonesia", *Padjadjaran Jurnal Ilmu Hukum (Journal of Law) 4*, No. 1 (2017), p. 49.

and/or services consisting of elements of entrepreneurs, workers/laborers and the government which is based on the values of Pancasila and the 1945 Indonesian Constitution. The elements of industrial relations can be described, namely: the existence of an industrial relations system, the existence of actors including entrepreneurs, workers/laborers and the government, the existence of a process of producing goods and/or services.[15] The position of workers in terms of bargaining power is generally much weaker than the position of entrepreneurs. Bargaining power is based on the level of expertise or ability of an actor to be able to influence his opponent by providing something that is beneficial to the opponent's own interests. When one actor has stronger bargaining power and can provide or fulfill the wishes of his opponent, then that opponent can act under the wishes of the actor who has stronger bargaining power.[16] The low quality of workers and high levels of unemployment mean that workers in Indonesia do not have many choices to find work, which has an impact on their low bargaining power with employers.[17] This illustrates the importance of protecting workers in weak positions.

Industrial relations disputes are differences of opinion that result in conflict between employers or a combination of employers and workers/laborers or trade/labor unions due to disputes regarding rights, disputes over interests, and disputes over termination of employment relations as well as disputes between workers/labor unions in just one company. The role and efforts of the State and government are to protect without discrimination the issues and problems that arise in the increasingly complex and increasing dynamics of industrial relations through mechanisms for resolving industrial relations disputes.

Settlement of disputes in industrial relations can be achieved in 2 (two) ways, namely through non-litigation dispute resolution as a first resort and litigation dispute resolution as a last resort if the first attempt does not materialize. Dispute resolution in industrial relations disputes makes non-litigation resolution the first effort in resolving disputes that is most beneficial for both disputing

[15] Ahmad Hunaeni Zulkarnaen, "Masalah Rawan Dalam Hubungan Industrial Dan Konsep Negara Kesejahteraan Indonesia," *Jurnal Hukum Mimbar Justitia* 2, No. 2 (2018): 806-825, https://doi.org/10.35194/jhmj.v2i2.32, p. 810.

[16] Raharja, I.K., Nugraha, A.B.S.W. and Prameswari, A.A.A.I., 2020. Analisis Bargaining Power Indonesia Dan Pt Freeport Indonesia Dalam Negosiasi Pengalihan Kontrak Karya Menjadi Izin Usaha Pertambangan Khusus Tahun 2017-2018. *Jurnal Garuda Kemdikbud Fisipol Universitas Udayana*. p. 6.

[17] Heru Saptaryo, "Penerapan Asas Kebebasan Berkontrak Pada Perjanjian Kerja Antara Majikan Dan Tenaga Kerja Indonesia Di Malaysia," *Notarius* 8, No. 2 (2015): 287-301, https://doi.org /10.14710/nts.v8i2.10267, p. 290.

parties. Non-litigation dispute resolution or out-of-court settlement is also known as Alternative Dispute Resolution (ADR) as an option for resolving disputes which is considered capable of providing an opportunity for the parties to obtain a mutually beneficial decision..

The PPHI Law shows that industrial relations dispute resolution can be carried out non-litigation, namely resolving disputes outside of court using settlement models including bipartite negotiations, mediation dispute resolution, conciliation mechanisms, and arbitration. Each of these efforts will be explained below:

a. Settlement of industrial relations disputes using bipartite negotiations. Bipartite negotiations are negotiations carried out by disputing parties, namely workers and employers, intending to ensure that disputes that occur can be resolved at the company level by deliberation without assistance from third parties, as regulated in Article 3 of the Manpower Law. In conducting bipartite negotiations, the parties are obliged to carry out good faith, behave politely and not be anarchic, and comply with the agreed negotiation rules.[18] Bipartite negotiations are carried out at the company level, so that the disputing parties must have negotiated first.[19] Guided by the provisions of Article 4 paragraph (1) of the Manpower Law, the worker/laborer should submit and record the problem to the Manpower Agency Office where the worker/laborer works by attaching evidence of the negotiation efforts that have been carried out as well as other evidence regarding the dispute that occurred.
b. Settlement of disputes through industrial relations mediation. Disputes between workers and employers that cannot be resolved in the Bipartite stage of the process are then continued at the mediation stage. Efforts to resolve disputes through mediation are carried out as a mandatory requirement in industrial relations cases. Provisions regarding industrial mediation are regulated in Article 1 number 1 of the PPHI Law, which states that industrial relations mediation, hereinafter referred to as mediation, is the resolution of rights disputes, interest disputes, employment termination disputes, disputes between trade unions/labor unions within only one company

[18] Putri, S.A., Karsona, A.M. and Singadimedja, H., "Dirumahkannya Pekerja yang Berujung Pemutusan Hubungan Kerja (PHK) pada Masa Pandemi Covid-19 secara Sepihak Berdasarkan Penyelesaian Sengketa Ketenagakerjaan Secara Non Litigasi", *ADHAPER: Jurnal Hukum Acara Perdata 8*, No. 1 (2022), p. 179.

[19] Rai Mantili, *op.cit.,* p. 58.

through mediated deliberation. by one or more neutral mediators. The implementation of mediation efforts that reach an agreement between the parties will be followed by the creation of a joint agreement signed by the parties. The agreement is then registered with the District Court in the area where you work or where the agreement was made.

c. Settlement of industrial relations disputes through Conciliation. Settlement efforts through conciliation as regulated in Article 17 of the PPHI Law, regulates that dispute resolution through conciliation is carried out by a conciliator registered with the office of the agency responsible for the Regency/City manpower sector.[20] The definition of conciliation is contained in Article 1 number 14 of the PPHI Law, which states that an industrial relations conciliator, hereinafter referred to as a conciliator, is one or more people who meet the requirements as a conciliator determined by the Minister, who is tasked with carrying out conciliation and is obliged to provide written advice to the disputing parties to resolve interest disputes, employment termination disputes or disputes between workers/labor unions in only one company. In the definition explained above, it can be seen that the model for resolving disputes through conciliation has similarities with the model for resolving disputes through mediation.

d. Settlement of disputes through industrial relations arbitration. Arbitration according to the provisions of Article 1 point 15 of the PHI Law is the resolution of a dispute over interests, and an association between labor unions in one company, a non-litigation resolution of industrial relations disputes through an agreement from the disputing parties to resolve the problem to an arbitrator whose decision is binding on the parties and is final. In essence, an arbitrator is an extension of negotiations with the assistance of a third party.[21]

2. Characteristics of Non-Litigation Dispute Resolution in Industrial Relations Dispute Settlement.

The country's development in the field of employment can be seen from its

[20] Novi Herawati, Ro'fah Setiawati, and Irma Cahyaningtyas, "Perwujudan Penyelesaian Perselisihan Hubungan Industrial Sebagai Cerminan Asas Keseimbangan," *Notarius* 14, No. 1 (2021): 428-443, https://doi.org/10.14710/nts.v14i1.39103, p. 430.

[21] Ahmad Zaini, "Mediasi Sebagai Salah Satu Bentuk Alternatif Penyelesaian Sengketa," *Al Qisthas: Jurnal Hukum Dan Politik Ketatanegaraan* 9, No. 2 (2018): 53-86, https://doi.org/10.37035/alqisthas.v9i2.1573, p. 63.

legal development. The public, especially workers and entrepreneurs in Indonesia, have high hopes regarding this matter. It is important to maintain legal development in the field of employment, in line with national development efforts in terms of increasing the dignity of workers and entrepreneurs. One way to maintain this balance can be done by referring to the guidelines for resolving industrial relations. The institution authorized to uphold justice regarding this dispute is the Industrial Relations Court (PHI), as an effort to resolve the litigation route. Referring to the concept of dispute resolution efforts, industrial relations disputes can be resolved through non-litigation efforts.

Stages of the process of resolving industrial relations disputes through non-litigation channels which can be carried out through negotiation between the parties, mediation, conciliation, or arbitration. Negotiation, according to Fisher and Ury, is two-way communication designed to reach an agreement when both parties have similar or different interests.[22] Settlement is assisted by a negotiator using competitive negotiation techniques and cooperative negotiation.[23] According to William, in competitive negotiation techniques negotiators will assume the other party is an opponent, can use threats, make high demands, and not care about the interests of the other party. Meanwhile, in cooperative negotiation techniques, negotiators work together to reach an agreement (consensus).[24]

There are four stages in carrying out negotiation efforts, the first is the orientation stage, the parties begin to open contact and build relationships with each other which shows an equitable position through submitting various requests. Second, the argumentation stage, the parties provide a specific description of the problem, so that concessions can be explored and developed. Third, the emergency and critical stage, namely the negotiation stage with the preparation of various new alternatives is an effort to anticipate the possibility of not reaching a consensus. Fourth, the agreement stage is put into writing and signed by the parties only if they get results from the negotiation process.[25] Negotiation success will be achieved if both parties understand the problems they are facing and have good intentions to make peace

[22] Roger Fisher, William L Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement without Giving In*, 3rd ed. (London: Penguin, 2011), p. 110.

[23] Michael Wheeler, "The Theory and Practice of Negotiation" *Journal of Legal Education* 34, No. 2 (1984), p. 326.

[24] Lalu Moh Fahri, "Mediator dan Peranannya Dalam Resolusi Konflik," *PENSA* 3, No. 1 (2021): 114-125, https://ejournal.stitpn.ac.id/index.php/pensa/article/view/1216, p. 118.

[25] *Ibid*.

their main commitment. Based on the characteristics of efforts to resolve disputes through negotiation, it can be utilized in industrial relations cases, provided that employers and workers wisely understand the root of the problem and are open-mindedly willing to resolve the problem internally.

Conciliation, guided by the provisions in Article 1 number 13 of the PPHI Law, industrial relations conciliation, hereinafter referred to as conciliation, is a dispute of interest, a dispute over termination of employment relations, or a dispute between workers/labor unions in just one company through deliberation mediated by one or more conciliators. Article 151 of the Manpower Law states that both employers and workers should try not to terminate employment relations, and further states that if it cannot be avoided, it should be ended by negotiations between the parties. These provisions form the basis of guidelines for workers and employers to prioritize the implementation of conciliation in efforts to resolve industrial relations disputes.[26] Settlement is carried out through the role of a conciliator who has proven expertise and plays an important role in understanding the problems between the parties to resolve the dispute peacefully and neutrally. The conciliator is registered and has legitimacy by the Minister/Manpower agency official.

The conciliator's task is to carry out conciliation and if it cannot be resolved through deliberation, provide written recommendations to the parties in dispute, as regulated in Article 1 number 14 and Article 19 of the PPHI Law. In carrying out their duties, the conciliator is obliged to: 1) summon the disputing parties so that the necessary information can be heard, 2) organize and lead negotiations, 3) help make a collective agreement, if an agreement is reached, 4) make recommendations in writing, if not reaching a settlement agreement, 5) making PPHI minutes, 6) making a PPHI results report (Permenakertrans No. PER-10/MEN/V/2005). If a dispute between the parties is to be resolved through conciliation, it is necessary to go to the local employment office, to then select a conciliator (registered at the Regency/City employment agency office as regulated in Articles 17 and 18 of the PPHI Law). The results of the agreement between the parties will later be recorded by the conciliator, 1) recording it in a book made specifically for this purpose, 2) conducting research on the dispute file including minutes of bipartite negotiations, 3) holding a conciliation hearing no later than seven

[26] Hazar Kusmayanti, Agus Mulya Karsona, and Efa Laela Fakhriah, "Penyelesaian Perselisihan Hubungan Industrial Melalui Putusan Perdamaian Di Pengadilan Hubungan Industrial Pengadilan Negeri Padang Kelas I (A)," *Adhaper: Jurnal Hukum Acara Perdata* 6, No. 1 (2020): 35-54, https://doi.org/10.36913/jhaper.v6i1.100, p. 38.

working days after receiving the request for a formal settlement. in writing, 4) summon the parties to attend the hearing taking into account the time of the summons so that the conciliation hearing can be held no later than seven working days after receiving the dispute resolution submission. In some situations, the conciliator can make the results of the conciliation in the form of written recommendations, such as in the situation where the party requesting the conciliation does not attend the meeting. If the party does not respond to the recommendation, the conciliator will refuse to resolve the dispute by conciliation in the form of a conclusion with a maximum duration of 30 days.

Arbitration is regulated in Article 1 point 15 of the PPHI Law, that between disputing parties, if based on a written agreement, the dispute can be resolved through an arbitration institution. The agreement relating to arbitration must at least contain the following things, the full names of the parties and addresses, the subject matter that will be continued in the arbitration settlement, the agreement regarding the number of arbitrators, the parties making a statement that they will comply with the arbitration award later, and containing the place and date an agreement is made that is signed by the disputing parties. Arbitration is a method of resolving disputes based on the agreement of the parties to resolve disputes outside of general court. There are basic principles in implementing arbitration, namely fast, independent and fair resolution, as well as guaranteed confidentiality of disputes with the concept of a win-win solution in resolving disputes.

Steps in resolving industrial relations disputes in arbitration must begin with peaceful efforts, which if this is successfully achieved by the parties will result in a deed of peace. The deed of peace will be registered with the district court in the region where the arbitrator is holding the peace. If the settlement is not successful, it will proceed to an arbitration hearing. The parties in this case will be allowed to explain the dispute that occurred and can show evidence and present witnesses. The arbitration award that has been determined will be final and binding and must be implemented by the parties. The arbitration award will be registered with the district court in the area where the arbitrator made the decision.[27] If the decision is not implemented and causes losses to one of the parties, a fiat of execution can be filed so that it can be executed by the industrial relations court at the local district court.

[27] Tri Ariprabowo and R Nazriyah, "Pembatalan Putusan Arbitrase Oleh Pengadilan Dalam Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014," *Jurnal Konstitusi* 14, No. 4 (2017): 701-727, https://doi.org/10.31078/jk1441, p. 714.

Concerning issues that can be raised in resolving industrial relations disputes through arbitration, it is not authorized if it is related to rights disputes. Generally, conflicts that occur between workers/employees and employers are related to struggles over rights related to work agreements or company regulations that cannot fulfill the interests of workers.[28] This limited authority makes arbitration have different characteristics from other media and is the main reason why it is very rarely used as an alternative dispute resolution in industrial relations. Another problem is that the public is still not familiar with the existence of arbitration as an institution for resolving industrial relations disputes. Arbitration is known as a dispute resolution medium that maintains its credibility and integrity, which will be beneficial for parties who have good intentions, are honest, and can be trusted. This is often used by entrepreneurs to get the opportunity to delay the implementation of the decision, by bringing the matter back to court, which tends to be detrimental to the workers/employees.[29]

Mediation is the first alternative dispute resolution to grow in the United States. Mediation is a medium that can be resolved in court (court mediation) if the case has been registered at the district court, while cases that have not been registered can be carried out outside the court (non-litigation). Implementation of mediation through the employment service can be carried out with the choice of mediator provided by each service in the local area. The mediator will work through the preparatory stages which include gathering information and discussing contacts with the parties before the content of the process itself is critically analyzed and continues with the implementation stages. Apart from being offered by the local Manpower Service, the option of resolving disputes using mediation is often preferred by workers who have disputes with their companies. In its development, there are several mediation models, namely: settlement mediation, facilitative mediation, transformative mediation, and evaluative mediation.[30] Settlement mediation is a compromise mediation to achieve a compromise on the demands of the parties. Facilitative Mediation is interest-based mediation that prioritizes problem-solving. Transformative Mediation is therapeutic mediation and conciliation which aims to find the basis of

[28] Wahyudi, E., 2009. Aspek Perjanjian Kerja Bersama (PKB) dalam Hubungan Kerja. *Jurnal Liga Hukum*, *1*(1), p. 36.

[29] Mustakim "Kajian Hukum Peniadaan Peninjauan Kembali Dalam Penyelesaian Perselisihan Hubungan Industrial," *Adhaper: Jurnal Hukum Acara Perdata* 8, No. 1 (2022): 127-148, https://doi.org/10.36913/jhaper.v8i1.174, p. 132.

[30] Revy S M Korah, "Mediasi Merupakan Salah Satu Alternatif Penyelesaian Masalah Dalam Sengketa Perdagangan Internasional," *Jurnal Hukum Unsrat* 21, No. 3 (2013): 33-42, https://ejournal.unsrat.ac.id/v3/index.php/jurnalhukumunsrat/issue/view/1857, p. 34.

the problem to find a solution. Evaluative Mediation, is normative mediation that seeks the rights of the parties in areas anticipated by the court. The stages and process of mediation themselves depend not only on the mediation model used but also on (a) the background, training, and style of the mediator; (b) the nature of the dispute and the disposition of the parties to the dispute; (c) availability of funds and other resources; and (d) external factors such as the existence of laws governing mediation.

The success of mediation if the parties can carry out the conditions such as bargaining, placing interests in the future, the possibility of exchange, the urgency and time limit for settlement, the absence of any form of hostility, the recognition that rights are no more important than the resolution of a problem, and understanding that mediation is a place that provides the best considerations compared to the litigation process.[31] The stages in conducting mediation according to Riskin and Westbrook can be divided into 5 stages, namely the parties can agree to undertake the mediation process; can understand the problem; provide several options to solve the problem; reach an agreement; and end with the implementation of the mediation results. In fact, in mediation, a settlement is reached by the parties but with the help of a mediator.[32] The mediator does not make a decision but only advises and guides the parties so that they can successfully resolve the problem.[33] A successful mediation will result in a peace deed. There is legal force that binds the Peace Deed, namely in Article 1858 of the Civil Code, which emphasizes that peace between the parties has the same force as a judge's decision, and has executorial force that is attached directly to the ratification of the peace into a deed.[34] The characteristics of these mediation efforts have sufficient effectiveness in encouraging the resolution of industrial relations disputes. Selecting a mediator who understands the interests of workers and employers. The role of the mediator is to provide input and actively participate in seeking peace between the parties until they reach an agreed result, amidst the nature of the mediator being neutral and not taking sides on both parties.[35] Based

[31] *Ibid*.

[32] Laurence Boulle, and Allan Rycroft. "Mediation: Principles, Process, Practice." JS Afr. L. (1998), p. 167.

[33] Peppet, Scott R. "ADR Ethics." J. Legal Educ. 54 (2004), p. 72.

[34] M Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*, 2nd ed., (Jakarta: Sinar Grafika, 2017), p. 334.

[35] I Gusti Ngurah Adhi Pramudia, Nyoman A Martana, and I Gusti Ayu Agung Ari Krisnawati, "Efektivitas Pelaksanaan Mediasi Sebagai Alternatif Penyelesaian Sengketa Perselisihan Hubungan Industrial," *Kertha Wicara: Journal Ilmu Hukum* 01, No. 04 (2013): 1-5, https://ojs.unud.ac.id/index.php/kerthawicara/article/view/6805, p. 4.

on the characteristics of mediation, it can be seen that this type of effort attracts people's choices in resolving industrial relations disputes. Ease of access and reduced costs and facilities from the local government make people more confident in choosing mediation as an option for resolving their disputes.

3. Optimizing the Settlement of Industrial Relations Disputes through the Application of the Advantages of Mediation Characteristics

There is no clear or generally accepted difference between conciliation and mediation as efforts to resolve disputes involving third parties, and both terms are often used in various countries, but the characteristics of mediation and conciliation are clearly different. In some countries the difference is based on the level of initiative from third parties to carry out the dispute resolution process.[36] The salient characteristic of a mediation process as an effort to resolve industrial relations disputes is the role of the Mediator and how the mediation process works. Refers to the dispute resolution process which is closely related to the role of the Mediator, which if seen from the role of the Mediator acts to provide assistance and does not decide because the role of the mediator in the mediation process is not like the role of the arbitrator in arbitration. In relation to the resolution of industrial relations disputes mediation can help promote their voluntary resolution by providing parties with an opportunity to test their assessment of alleged violations of law or rights against known sources of information, including case law and precedent. In this process, the mediator does not provide legal interpretations or mutual agreements but acts as an individual who understands the law, and regulations in the field of employment and industrial relations dispute resolution, and can guide the parties through available information and relevant sources.[37] The mediator is not someone who tells the parties how to resolve their issues, should not put pressure on the weaker party, or encourage a resolution that is not in the best interests of the parties to register success on their record.

In the mediation process in resolving industrial relations disputes, the role of the parties is to control the problem while the mediator controls the mediation process. The mediator needs to act as a manager of the negotiation process between the parties neutrally to help the parties identify and articulate their interests, needs, and priorities and find an acceptable solution so that the

[36] Martin C Euwema *et al*., "From Intervention to Prevention in Collective Labor Conflicts," *Mediation in Collective Labor Conflicts* 47, No. 3 (2019): 325-338, https://doi.org/10.1007/978-3-319-92531-8_21, p. 328.

[37] Kevin Foley and Maedhbh Cronin, *Professional Conciliation in Collective Labour Disputes: A Practical Guide*, 1st ed., (Switzerland: ILO, 2015), p. 9.

outcome to be achieved depends on the parties. Preventive measures also include strategies that mediators can use. Providing facilitation of communication between the parties, encouraging the participation of the parties in making agreements that affect them, the practice of effective and regular social dialogue, and an adequate system for compliance and law enforcement.[38] This preventive step is intended to focus on providing advice so that disputes can be resolved well without leaving any grudges, so a cooperative approach between the parties is needed.

Another advantage is how the mediator is obliged to maintain confidentiality. It can be seen that in the mediation process an attitude of neutrality and impartiality is needed to maintain the parties' trust in the mediator so that with the background and experience of a mediator who specifically has expertise in the field of industrial relations and dispute resolution techniques in general, it will be quick to reach an agreement. Several member countries of the International Labor Organization (ILO) require parties to participate in mediation procedures in resolving industrial relations disputes in certain situations. Mediation in Indonesia is a tripartite process that must be passed before the adjudication process. Tripartite methods are the resolution of industrial relations disputes through a third party. The existence of a tripartite is a step that must be pursued in the industrial relations dispute resolution system in Indonesia. This is stated in Article 4 paragraph (3) and paragraph (4) jo. Article 8 of the PPHI Law and paying attention to the provisions of Article 5 of the PPHI Law. Regarding mediators in industrial relations mediation, it is stated in the general provisions of Article 1 number (12) of the PPHI Law that mediators in tripartite implementation come from employees of government agencies responsible for the field of employment who fulfill the requirements as mediators determined by the Minister to be tasked with carrying out mediation. and should provide written advice to disputing parties to resolve rights disputes, interest disputes, employment termination disputes, and disputes between trade unions/labor unions within only one company. Due to the characteristics of the mediator in industrial relations mediation, the mediation process can help reduce the escalation of cases to the formal adjudicative process and help develop the parties' understanding of the value of assisted negotiations.[39]

The characteristics of a superior mediator also lie in the mediation methods and approaches used by

[38] William Brown, *Third Party Processes in Employment Disputes*, *The Oxford Handbook of Conflict Management in Organizations*, 1st ed., (Oxford: Oxford University Press Oxford, 2014), p. 136.

[39] Roberto Martinez-Pecino *et al*., "Effectiveness of Mediation Strategies in Collective Bargaining," *Industrial Relations: A Journal of Economy and Society* 47, No. 3 (2008): 480-495, https://doi.org/10.1111/j.1468-232X.2008.00530.x, p. 488.

the mediator. In general, there are no regulations/legislation regarding mediation methods, however, mediation methods and approaches in resolving industrial relations disputes lie in mediators who apply best practice standards obtained during training in obtaining certification as a mediator. The mediation methods and approaches that need to be used by mediators take into account that the level of knowledge of workers in Indonesia varies, the legal process through litigation procedures is considered burdensome for workers, workers also do not master the techniques of court proceedings and in reality, there are differences in strata where workers are placed. weaker party.[40] Likewise, the mediator's own experience becomes a support in the strategy as well as the intra-personal approach developed by the mediator which is the freedom to undergo the process in accordance with the general concept of mediation to resolve and respond to specific disputes. In general there are several approaches to Mediation that have developed, some of which are: Settlement mediation where the mediator works to bring the parties from their position to a compromise; Facilitative mediation that prioritizes and promotes communication between parties to help identify interests, needs & highlight areas for trade-offs and compromises for mutually acceptable solutions, the Mediator does not propose solutions to the parties; Evaluative mediation: where the mediator not only encourages communication but can also propose solutions based on an assessment of the parties' positions according to the legal rights and responsibilities of the parties and the mediator himself; Therapeutic mediation: The mediator's efforts are essential to try to focus on dealing with the underlying causes of problems with the aim of improving future relationships between the parties.

If we look back, there are characteristics of industrial relations disputes that are typologically different from other disputes. In general, mediators are more likely to combine and combine these approaches in harmony depending on the nature of the conflict and the personal characteristics of the parties. The mediation process is very dependent on the game played by the parties involved in resolving the dispute, where the parties directly involved are the mediator and the disputing parties themselves.[41] In Industrial Relations

[40] Agus Mulya Karsonaa, Sherly Ayuna Putrib, and Efa Laela Fakhriah, "Prospects of Industrial Relations Court Complete Employment Disputes in Indonesia in the ASEAN Economic Community (MEA)," *International Journal of Innovation, Creativity and Change* 10, No. 5 (2019): 328-345, p. 328.

[41] Siti Kunarti, "The Power of Mediator Suggestions in Mediating the Settlement of Pancasila Industrial Relations Disputes Outside the Court," *Jurnal Dinamika Hukum* 19, No. 3 (2020): 795-809, https://doi.org/http://dx.doi.org/10.20884/1.jdh.2019.19.3.1881, p. 798.

Dispute Mediation, the same thing that is aimed at the tripartite stage is problem-solving, the main aim of which is a settlement agreement. During industrial relations disputes, a mediator's objective is to transform contentious, combative exchanges into constructive problem-solving discussions that yield optimal outcomes for all parties involved. What specific actions does a mediator take to achieve this objective in the context of industrial relations mediation as ones below:

a. The mediator's function here is to help the disputing parties to find various possible resolutions to the disputes faced by the parties. This can be done first by asking the parties to provide oral and written information and requesting documents and letters relating to the parties' dispute.[42] This is done to help the parties talk to each other by clarifying the problem, ascertaining the initial details of the working relationship, guiding the parties towards compromise and collaboration to find a resolution, and if conditions at the time of mediation are not possible due to emotional nature, then it can be carried out using a caucus mechanism, namely the mediator only meets with one party without the presence of the other party to enter the mediation room and accommodate each interest. When the first party has finished caucusing, the mediator is obliged to caucus with the other party;
b. The mediator does not have the authority to decide but only assists the disputing parties in finding a resolution that is acceptable to the parties. In this case, after mediation or carrying out mediation using a caucus mechanism, the mediator helps the parties to identify their interests/ needs (behind their positions/ demands) and create options for mutual benefit to safeguard the interests of both parties.;

   During the mediation process, the mediator must focus on the future, because the most important emphasis on non-litigation resolution is to focus on the future for both parties to be able to safeguard their respective interests. This is because if you are still talking about the past (about the problem), then the parties will be led away and focus on the discussion and situation and blame each other so that there is no common ground to resolve the problem.
c. Basically, the mediator encourages the parties to the dispute to try to reach an agreement based on the elements of a win-win solution. A win-win solution is a frame of mind

[42] Iwin, I., "Kedudukan Mediator Dalam Penyelesaian Perselisihan Hubungan Industrial", *Media Bina Ilmiah 14* No. 11 (2020), p. 3450.

and heart that always tries to obtain mutual benefits in every human interaction. A win-win solution means a solution that is profitable and satisfies all parties, all parties feel good and agree with the results achieved. Win-win sees life not as an arena of competition but an arena of cooperation.[43]

From the characteristics of mediators in resolving industrial relations disputes as mentioned above, the stages of the mediation process will become smoother, because the main emphasis is on mediators who can generate understanding among the parties about the meaning of a consensual peace and deepen the understanding of the parties about the objectives of a mediation. The stages that can be carried out by a mediator in industrial relations mediation are as follows:

a. Introduction and beginning: at this stage the mediator asks for information from the parties, the process, the purpose of the mediation (settlement, not investigation), and conveys the roles of the parties;
b. Gather information to clarify negotiation subject matter, issues, and conflicts. At this stage, it is possible to hold joint sessions or caucuses with the parties to build mutual understanding about what disagreements occur, so that in a process at this stage we will understand what needs are not being met on both sides;
c. Clarifying interests: at this stage, it is also possible to hold a joint session or caucus with the parties to discuss what each party wants. View every incident and convey information holistically to find differences and similarities in interests on both sides as a starting point for sharing the results of the conflict;
d. Developing a solution: at this stage the mediator opens a discussion session to listen to arguments and share opinions with both parties about what methods the parties want to achieve and what methods the mediator thinks they can achieve to resolve the dispute. At this stage, the mediator remains to develop an understanding for both parties in finding a solution and what can be done to prevent a resolution. Both parties must come to the best conclusion with the obligations

[43] Ayi Sobarna, "Pendekatan Win-Win Solution dalam Mengatasi Terorisme Internasional: Tantangan dan Peluang," *Mimbar: Jurnal Sosial dan Pembangunan 18*, No. 4 (2002): 379-398, https://doi.org/10.29313/mimbar.v18i4.80, p. 386

and responsibilities of each party in maintaining the solution that has been reached;

e. Conclusion with the settlement: this is the final stage of the mediator's role after obtaining a dispute resolution conclusion from the parties so that the mediator can reaffirm the conclusion to the parties and then record it as an agreement to resolve the dispute between the parties so that it can be implemented legally.

In the realm of resolving industrial relations, mediation has demonstrated its exceptional efficacy, owing to its undoubtedly eminent characteristics according to the stages and process of mediation relies on the role of the mediator itself. Of course, what competencies an industrial relations mediator needs must be seen from skills-based competencies, including: First, people management skills to create and maintain a conducive environment for mediation and build understanding using various communication skills. Second, process management skills, are carried out to establish and maintain a safe and effective framework for the mediation process by working through the mediation phases effectively and systematically. Third, problem management skills where the mediator is able to empower the parties to determine the best content and results in resolving disputes. Ability to deepen and explore the beginning of a working relationship until problems arise so as to be able to help parties generate options and facilitate negotiations. Fourth, knowledge-based skills, of course, such as the mediation process, conflict management, skills in initiating a results-based negotiation process by conveying to the parties the principles of dispute resolution and related regulations.

D. CONCLUSIONS

In the field of industrial relations, there are several alternative avenues available for resolving disputes that do not involve litigation. These options include negotiation, conciliation, mediation, and arbitration. Among these, mediation is a particularly effective approach due to its unique attributes. The mediation process occurs at the employment service and involves the selection of a mediator by each service in the local area. The efficacy of mediation in resolving disputes largely depends on the skills of the mediator, who can guide the parties toward understanding the importance of achieving a mutually beneficial and peaceful resolution, while also deepening their comprehension of the mediation process. To enhance the mediation process and ensure the successful resolution of industrial relations, mediators must possess a range of skill-based competencies. These competencies include people management skills, effective process management, problem-solving skills, and knowledge-based skills such as mediation process, conflict

management, and negotiation initiation. By developing these skills, mediators can ensure effective communication, build trust, and facilitate constructive dialogue between parties. Ultimately, this can lead to fair and mutually beneficial outcomes for all parties involved in the mediation process

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