

## Exploring Decision of Peace on Settlement of Industrial Relation Disputes

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**ABSTRACT:** Peace efforts are one of the solutions to resolve the case in a short time and low cost. In settlement of industrial relations disputes, peace efforts are generally carried out in a bipartite and tripartite manner. However, peace efforts also often occur at the stage of litigation or industrial relations courts. Enacted using legal research approach with documentation analysis, this study attempted to investigate how peace efforts were made in industrial relation disputes. Findings of the study indicated that the peace decision on the settlement of industrial relations disputes has permanent legal force following article 1858 paragraph (1) Civil Code and article 130 paragraph (2) and (3) HIR. Meanwhile, the factors that cause industrial relations courts to settle industrial relations disputes through peace efforts can be divided into two, namely normative and implementation factors.

### I. INTRODUCTION

Alternative Dispute Resolution (ADR) can be a solution for the parties to the dispute in resolving conflicts experienced in a short time and low cost. The term Alternative Dispute Resolution has been known in Indonesia since the enactment of Law Number 30 of 1999 concerning Disputes and Alternative Dispute Resolution. More importantly, consensus resolution has long been carried out by the community, which in essence emphasizes the deliberation of consensus agreements, kinship, peace, and so on (Matsumoto, 2011). ADR has a special appeal in Indonesia because of its harmony with social, cultural, and traditional systems based on consensus. The main legal basis for peace in Indonesia is the foundation of the Indonesian state, Pancasila. In its philosophy, it is implied that the principle of dispute resolution is a deliberation to reach consensus. This is also implied in the 1945 Constitution of the Republic of Indonesia (Lee et al., 2016).

The importance of peace efforts in resolving a dispute received a positive response from the Supreme Court (MA) (Pratomo & Kwik, 2020). In 2008 the Supreme Court issued the Supreme Court Peraturan (PERMA) Number 1 of 2008 concerning Mediation Procedures in the Court, which has now been updated with the issuance of PERMA Number 1 of 2016. PERMA Number 1 of 2016 contains an important point, namely the existence of rules regarding Good Intentions in the mediation process and due to the law of the parties who have no good intention in the mediation process that were not previously regulated in PERMA Number 1 of 2008 (Abdullah, 2015).

The study arranged the mediation procedure in court to show that peace was not only sought outside the court (ADR) but also sought for disputes that had entered the realm of the court. This suggests that peace efforts must take precedence in resolving disputes that occur. Regulations regarding mediation procedures in court are expected to be able to settle disputes in favor of the parties or a win-win solution (Abedi et al., 2019). An interesting thing that should be considered in the mediation arrangement by the Supreme Court is the existence of disputes that are exempt from the obligation to settle through mediation. One of the exclusions is disputes that are resolved through industrial relations court procedures. In PERMA Number 1 of 2016, it was stated that the exception was due to a grace period for resolving disputes related (Andrew, 2001).

An industrial relations court is a special court within the general court environment that is authorized to resolve industrial relations disputes. Article 103 of Law No. 2/2004 concerning Industrial Relations Disputes states that the Panel of Judges must provide decisions on the settlement of industrial relations disputes no later than 50 working days from the first hearing (Fan & Li, 2013). That means, the law on industrial relations disputes mandates that dispute resolution is brief. That grace period also excludes industrial relations disputes in the regulation of mediation procedures in court (Wang et al., 2020).

Although industrial relations disputes are excluded in the mediation procedure in court, in reality, mediation against industrial relations disputes in court often occurs (Wang et al., 2020). This can be seen in the Yogyakarta Industrial Relations Court. From 2008 to 2016, a total of 13 industrial relations disputes were settled

through peace efforts at the Yogyakarta Industrial Relations Court (Johnson, 2020). The phenomenon is ironic considering that industrial relations disputes have a special way of mediation, namely by way of bipartite and tripartite (mediation in the Department of Labor). The existence of peace efforts that occur in industrial relations court procedures, which are reflected in the peace decision, raises the idea that bipartite and tripartite peace efforts that occur between employers and workers are not going well. So it needs to be studied more deeply and comprehensively about the peace efforts (Liu et al., 2017).

The legal force attached to the peace decision is regulated in Article 1858 of the Civil Code and Article 130 paragraph (1) and paragraph (2) of the HIR. According to Article 1858 paragraph (1) of the Civil Code, peace between the parties is as strong as the final judge's decision. However, the problem is the legal force of the peace decision that was born from industrial relations disputes, bearing in mind that PERMA No. 1 of 2016 excludes dispute resolution through industrial relations procedures. Given the aforementioned issues in this paper, the researcher attempted to examine the peace decisions in industrial relations disputes. Specifically, this study seeks to construe how peace decision was constructed in industrial disputes.

## II. METHOD

This study employed a legal research approach. Legal research does not need to use the term normative legal research because this term is always normative. The approach used in this legal research was the statutory approach. It was carried out by examining all legislation related to legal problem issues within society. The method of gathering legal materials in this research was carried out through documentation in the forms of primary legal materials and secondary legal materials related to the problem examined. In contrast, the legal material collection tools used were documentation studies, namely studying various legal materials in the form of official documents, books, expert writings, report results, jurisprudence, laws, and regulations, as well as websites related to the material or content of the problem. In this study, all data obtained were analyzed qualitatively, that is, the data chosen was closely related to the problem to be studied, connected, and analyzed with the facts that occurred in the object of research, so that an overview of the facts obtained. The results of the study were further described in a prescriptive manner to obtain a picture of the objectives to be achieved in this study.

## III. RESULTS AND DISCUSSION

The legislation is a written regulation that generally contains binding legal norms and is formed or established by a state institution or authorized official through established procedures. The Supreme Court Regulation (PERMA) is one of the statutory regulations. This is affirmed in Article 8 of Law Number 12 of 2011 concerning the Formation of Regulations and Regulations stating that the types of legislation other than those referred to in Article 7 paragraph (1) include regulations established by the People's Consultative Assembly, the House of Representatives, Regional Representative Council, Supreme Court, Constitutional Court". The existence of these laws and regulations is recognized and has binding legal force insofar as it is ordered by higher statutory regulations or formed based on their authority (Gonzalvo et al., 2020).

PERMA is a regulation determined by the Supreme Court and has binding legal force. The scope of PERMA applies to all courts in Indonesia. Therefore, PERMA has an important role in building a better legal structure (Pellegrina et al., 2017). One of the statutory regulations stipulated by the Supreme Court is PERMA Number 1 of 2016 concerning Mediation Procedures in the Court. The essence of the PERMA is so that every civil case processed in court ends in peace. The civil procedural law in Indonesia actually requires peace. This can be seen in the formulation of Article 130 HIR and 154 RBg who know and want to resolve disputes through peaceful means. Based on the provisions of the article, the system governed by procedural law in settlement of cases submitted to the court is almost the same as the court-connected arbitration system (Elziny et al., 2016).

Based on the existence of Article 130 HIR in civil procedural law, it shows that long before the Alternative Dispute Resolution system was known in the current era, a foundation was established that demanded and directed the settlement of disputes through peace. The form of settlement outlined in Article 130 HIR is more similar to a combination of a mediation or conciliation system with a court-connected system so that it can be assembled into connected mediation or conciliation (Ojiako et al., 2018). Based on Article 130 HIR and 154 RBg, the Supreme Court established PERMA Number 1 of 2016 to better guarantee legal certainty regarding mediation procedures in the court. Although the PERMA strongly requires peace, in Article 4 paragraph (2). There are exceptions to the type of case being mediated. One of the excluded cases is a case that is settled through the industrial relations court procedure.

Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes mandates the settlement through mediation of the settlement of industrial relations disputes carried out by mediators who are in each office of the agency responsible for the district/city manpower sector. This becomes one of PERMA legis ratios Number 1 of 2016, excluding the types of industrial relations disputes to be mediated in court, in addition to considering the time limit for the settlement of industrial relations disputes in court, which must be terminated

within 50 days. The peace decision that occurs in the industrial relations court is because the panel of judges examining the case is based on Article 57 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes which states that the procedural law applicable to the industrial relations court is the civil procedural law applicable to the court in general justice environment unless specifically regulated in law. Based on these provisions, dispute examination refers to Article 130 HIR (Clifford & Van Der Sype, 2016).

Judges' decisions must consider three aspects, namely juridical, philosophical, and sociological aspects. Juridical aspects are the first and foremost aspects based on applicable laws. Judges, as applicators of the law, must understand the law by looking for regulations relating to the case being faced. In this case, the judge must be able to assess that the regulation provides justice and benefits to the community (Hickey & Robeyns, 2020). The philosophical aspect is an aspect that is centered on truth and justice, while the sociological aspect, considers the cultural values that live in society. Philosophical and sociological aspects, its application requires extensive experience and knowledge as well as the wisdom that is able to follow the values in neglected societies (Langemeyer & Connolly, 2020).

The actual implementation of the duties and authority of a judge is carried out within the framework of upholding truth and justice, by holding fast to the law, laws, and values of justice in society. In the judge's mandate is carried out so that the laws and regulations are applied correctly and fairly, and if the application of legislation will cause injustice, then the judge is obliged to side with justice and override the law or legislation. From the different opinions regarding the purpose of the law, it can be concluded that there are three legal objectives that have been developed so far, namely as follows: 1) ethical flow, which considers that in principle the purpose of the law is merely to achieve justice, 2) utilization flow, which considers that in principle the purpose of the law is only to create the benefit or happiness of the community, and 3) juridical normative flow, which considers that in principle the purpose of the law is to create legal certainty.

Looking at the objectives of the law, there are three basic legal values, namely justice, expediency, and legal certainty. The use of the priority principles of the three principles, namely, the first priority, always falls on justice, after that benefit and finally legal certainty. Judging from aspects that must be considered by judges in making decisions and legal objectives, it can be concluded that the birth of a decision of peace through the procedural law of industrial relations disputes because it prioritizes justice and expediency rather than legal certainty. The panel of judges assumed that humans are for law, not law for humans, so in this case, the panel of judges took progressive steps. The parties also welcomed the steps taken by the judges to seek peace.

The behavior of progressive law enforcement has the basis that the presence of law is an institution aimed at bringing people to a just, prosperous life and making people happy. Based on that, the presence of law is not for itself, but for something broader, namely for human dignity, happiness, welfare, and human glory. That is why when there are problems in the law, and then the law must be reviewed and corrected, not humans who are forced to be included in the legal scheme.

Apart from the progressive behavior of the judges who prioritize justice and expediency, the peace decision on industrial relations disputes must be reviewed in legal certainty because it has an impact on the legal consequences of the peace decision. If the peace decision is indeed contrary to PERMA Number 1 of 2016, then the peace decision can be canceled. That view is based on Article 1337 of the Civil Code, which prohibits agreements containing illicit power; that is, approval must not violate or contravene the law, good decency, and public order. As a result of this prohibition associated with the peace deed, the judge is not allowed to confirm the agreement in the form of the establishment of a peace deed, which is contrary to the law, decency, or public order.

Article 4 paragraph (2) letter a PERMA Number 1 of 2016 states that disputes that are exempt from the obligation of settlement through Mediation as referred to in paragraph (1) included disputes for which hearings are determined in the trial period include 1) disputes resolved through Commercial Court procedures, 2) disputes resolved through Industrial Relations Court procedures, 3) objections to the decisions of the Business Competition Supervisory Commission, 4) objections to the decisions of the Consumer Dispute Settlement Body, 5) requests to cancel the arbitration award, 6) objection to the decision of the Information Commission, 7) settlement of political party disputes, 8) disputes resolved through simple litigation procedures, and 9) other disputes for which hearings are determined by the time limit for resolution in the provisions of the legislation.

The word obligation in the provisions of the article causes Article 4 paragraph (2) of PERMA Number 1 of 2016 to be multi-interpreted because if it is examined in an argumentum a contrario this provision may mean allowing industrial relations court procedures to mediate, but this is not mandatory. With this meaning, Article 4 paragraph (2) letter a PERMA Number 1 of 2016 becomes a double meaning. Besides being studied a contrario, PERMA Number 1 of 2016 can also be studied with theological or sociological interpretation. Sociological interpretation is the meaning of the rule of law based on the purpose of making the rule of law and what is to be achieved in society. In sociological interpretation, the judge interprets the statutory regulations in accordance with the objectives of forming laws and regulations. PERMA No. 1 of 2016 actually encourages cases that go to court to end in peace, so that the mediation procedure becomes a tool to realize that peace.

Based on the description that has been stated, it can be concluded that the peace decision that was born through the industrial relations court procedure is not in conflict with PERMA No. 1 of 2016. Therefore, the peace decision has permanent legal force as described in Article 1858 paragraph (1) The Civil Code, which states that all peace has between the parties a power such as a judge's decision in the final level. In addition to the aforementioned provisions, Article 130 paragraph (2) of the HIR also regulates the binding power of a peace decision. The article states that if such peace can be achieved, then at a hearing a deed is made about it, in which both parties will be punished will keep the agreement what is done, which letter will have power and will be carried out as an ordinary decision (Oseni et al., 2016). Furthermore, Article 130 paragraph (3) of the HIR states that such a decision is not permitted to appeal. If these articles are concluded, they can be described as follows: 1) a peace decision is equated with a court decision that has obtained permanent legal force, 2) a peace decision is closed against an appeal, and 3) a peace decision has the power of execution.

#### IV. CONCLUSION

Based on the results of the analysis in this study, it was concluded that the peace decision that was born from the industrial relations court procedure prioritizes aspects of justice and expediency. If reviewed in a contrario formulation of Article 4 paragraph (2) letter a PERMA Number 1 of 2016, this provision means to allow industrial relations court procedures to conduct mediation, but this is not mandatory. Besides that, theologically or sociologically PERMA No. 1 of 2016 actually encourages cases that go to the court to end in peace, so that the mediation procedure becomes a tool to realize the peace. Therefore, the decision of peace has permanent legal force in accordance with Article 1858 paragraph (1) of the Civil Code and Article 130 paragraph (2) and (3) HIR.

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