

THE NEW INDONESIAN LABOR COURT*

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INTRODUCTION

Industrial Relation Court is established as a new labor court with the goal to protect workers. Previously labor disputes were settled through Panitia Penyelesaian Perburuhan Daerah – P4D (Regional Labor Dispute Settlement Committee). If either party was not satisfied, the P4D decision could be brought to appeal to Panitia Penyelesaian Perselisihan Perburuhan Pusat – P4P (Central Labor Dispute Settlement Committee). If the employer was still not satisfied, the decision of P4P could be brought, again, to Pengadilan Tata Usaha Negara (The State Administrative Court).¹

The judges of this new Labor Court come from representatives of workers, employers and from the judges of The General Court for the First Instances.²

Under the law No. 2 of 2004 concerning the Industrial Relation Disputes Settlement, labor dispute is obliged to be settled through forum of bipartite negotiation, and conciliation or arbitration within 40 days respectively. If one of the parties is not satisfied with the bipartite negotiation and conciliation, he or she can bring the dispute to arbitration or the Labor Court and its decision will be issued at the latest 50 days and cassation to the Supreme Court. The decision of the Supreme Court will be issued within maximum 30 days.³

The Parliament promulgated Law No. 2 of 2004 concerning the Industrial Relation Disputes Settlement on 13th January 2004, and signed by President Megawati on 14th January 2004. Actually this statute should be legally binding a year later on 14th January 2005. However, President Susilo Bambang Yudhoyono postponed the validity

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¹ “Disiapkan UU Pengadilan Penyelesaian Hubungan Industrial” (Preparing the Bill on Industrial Relation Settlement Dispute Court), *Kompas*, 6 Januari 2000.

² “Pengusaha Jangan Halangi Kegiatan Serikat Pekerja” (The Employers Do Not Obstruct The Activities Of Labor Union), *Kompas*, 7 September 2001.

³ “UU PPHI Beri Kepastian Hukum Bagi Kedua Belah Pihak” (Law of Industrial Relation Settlement Dispute Creates Legal Certainty For Both Parties), *Kompas*, 19 Desember 2003.

of this statute until 14th January 2006,⁴ due to not ready conditions such as facilities, many people were not familiar with the new statute, and the judges assigned in this Court were not prepared.⁵ The Supreme Court of the Republic of Indonesia selected 225 candidates of judges for this Labor Court.⁶ 159 judges were appointed for The Labor Court for the First Instances in 33 Provinces and 15 judges for the Supreme Court level.⁷ They started working in 2006. In 2006 cases of labor disputes increased. For example, the Legal Aid for Labor had handled 450 cases, while in 2005 there were only 300 cases.⁸

After eight months since its establishment, the Industrial Relation Court was not yet effective. The court session which should last for 50 days, in fact it often exceeded such period. Similarly some of the Ad Hoc Judges, namely the judges who come from representatives of labor and employer, have not yet received salary at that time.⁹

Labor dispute was frequently attended by hundreds of labor in the court room. For example, in the case of labor employment termination of PT. Buana Metalindo, a manufacturer of automotive filter in Tangerang, the labor demanded that the company re-employ them and pay 5-month salary. The judges made a decision that the company to re-hire all workers which is a total of 246 persons who were terminated since November 2006. The company submitted cassation to the Supreme Court.¹⁰

After this Labor Court has been operational for 2 years, the process of court session is still not effective. "The prolonged court session process makes labor's expectation to Industrial Relation Court continuously diminish. The Supreme Court

⁴ Peraturan Pemerintah Pengganti Undang-Undang No. 1 Tahun 2005 (Government Regulation in Lieu of Statute No. 1 of 2005).

⁵ "Presiden Tunda Pelaksanaan UU PPHI" (President Postponed the Implementation of Law on Industrial Relation Dispute Settlement), *Kompas* 17 January 2005. Peraturan Pemerintah Pengganti Undang-Undang No. 1 Tahun 2005, Peraturan Pemerintah Pengganti Undang-Undang ini didasarkan pendapat Ketua Mahkamah Agung R.I. 10 Desember 2004 (The Government Regulation in Lieu of Statute No. 1 of 2005 was issued after receiving the opinion of the Supreme Court).

⁶ "MA Terima 225 Calon Hakim "Ad Hoc" Pengadilan Hubungan Industrial" (The Supreme Court Accepted 225 Candidates "Ad Hoc" Judges of the Industrial Relation Court), *Kompas*, 20 Agustus 2005. Lihat juga "Infrastruktur Pengadilan Perlu Dibenahi" (Infrastructure of Court Has To Be Improved), *Kompas*, 3 February 2006.

⁷ "Hakim "Ad Hoc" Industrial Dilantik" ("Ad Hoc" Judges Has Been Sworn In), *Kompas*, 15 April 2006.

⁸ "Kasus Perburuhan Meningkat" (Labor Cases Increased), *Kompas*, 14 Desember 2006.

⁹ "Pengadilan Hubungan Industrial Belum Efektif" (The Court of Industrial Relation Has Not Yet Been Effective), *Kompas*, 23 Desember 2006.

¹⁰ "Terkena PHK Ratusan Buruh Datangi PHI" (After Their Employment Terminated Hundreds of Labor Came to the Industrial Relation Court), *Kompas*, 10 Agustus 2007.

should immediately create a new system so that this institution becomes effective for labor and employer”, said Rekson Silaban the President of Indonesia Prosperous Labor Union Confederation. Hasanuddin Rahman Deputy Chairperson of Apindo (Indonesian Employers Association) admitted, the implementation of Labor Court still undergoes many problems, for example the parties in dispute still do not fully understand the legal procedure of the court. There is no uniformity or certainty of settlement of labor dispute so that labor union’s attitude prefers to choose street-rally as show of force arena. Meanwhile, the Junior Chairperson of the Supreme Court Abdul Kadir Mappong said, there were still many parties in dispute who had not understood this new court legal procedure. This situation had caused lengthened court session because the assembly of judges had to explain many aspects to help the parties in dispute fulfilling court legal procedure requirements. Furthermore, Abdul Kadir said, the Law No. 22 of 2004 needed amendment because there were some articles considered to be illogical, for example, Article 115 which regulated cassation process that had to be decided within 30 working days since the request being accepted. ”That is difficult to materialize because of such limited time, whereas the incoming requests are quite many. Ideally, (the time frame) should be more than 30 days so that we can examine the files more carefully before making decision”, said Abdul Kadir.¹¹

This Labor Court replaces the function of Regional Labor Dispute Settlement Committee (Panitia Penyelesaian Perselisihan Perburuhan Daerah - P4D) and Central Labor Dispute Settlement Committee (Panitia Penyelesaian Perselisihan Perburuhan Pusat – P4P).

Paragraph (1) of the Article 1 of Law Number 2 of 2004 mentions that this Labor Court has jurisdiction on disputes between employer and labor or labor union concerning rights dispute, conflict of interest, conflict of employment relation termination and dispute between labor unions in one company.

Dispute of right is a dispute that arises because a certain right is not fulfilled, due to differences of implementation or interpretation of regulation, employment agreement, company regulation or collective labor agreement.

¹¹ “PHI Butuhkan Sistem Baru Agar Lebih Efektif Tangani Sengketa” (The Court of Industrial Relation Needs a New System to Settle Disputes Effectively), *Kompas*, 22 September 2007.

Conflict of interest is a conflict that arises in employment relation because there is no conformity of opinion on conduct, there exists/or change of employment conditions stipulated in employment agreement, or company regulation, or collective labor agreement.

Conflict of employment relation termination is a conflict that arises because there is no conformity of opinion on employment relation termination conducted by either party.

Conflict between labor unions is a conflict between labor unions and other labor union in one company, because there is no conformity of understanding on membership, implementation of right, and obligation of unionism.

Prof. Dr. Aloysius Uwiyono criticized the category of types of disputes. He said that, categorizing labor dispute under the law number 2 of 2004 concerning Settlement of Industrial Relation Disputes is not correct, because, employment relation termination dispute (pemutusan hubungan industrial) and inter labor unions dispute are not in same level as rights dispute and dispute of interest.¹² Categorizing type of right dispute and interest dispute are based on its causes, i.e., there is unresolved differences on implementation of legal rules, differences of treatment, and differences on interpretation of a legal provision for right dispute, and unresolved differences on changes of working conditions for interest dispute. Employment relation termination disputes, overtime payment disputes, social security disputes, work health and safety disputes are examples of right/legal disputes. While dispute of inter-labor unions depend on the subjects in dispute. Furthermore, the dispute arising between labor union depend on its causal factor, such as, unresolved differences on the implementation of legal rule or differences on interpretation of a legal rule which can be considered as right disputes category.

Industrial relation disputes under the Law No. 2 of 2004 settlement of industrial relation disputes can be settled by bipartite, mediation, conciliation, arbitration and before the industrial Relation Disputes Settlement Court. The out of court settlement by negotiation, mediation, conciliation and arbitration has been known in the previous law.¹³

¹² Diah Lestari Pitaloka, "Menyongsong Lahirnya Pengadilan Hubungan Industrial" (To Welcome the Establishment of the Industrial Relation Court), MaPPI February 7, 2005. p. 7

¹³ Law No. 22 of 1957 and Law No. 12 of 1964.

Labor Dispute Settlement in the Past

Before the Law of Settlement of Industrial Relation Disputes was promulgated, settlement of labor dispute can be carried out by adjudication or Out-of-Court-Settlement (Non Adjudication). Under the article 116 g of *Reglement op de Rechterlijke Organisatie en het Beleid der Justitie in Indonesie* (RO) State Gazette No. 23 of 1847 it is mentioned that “The requirement for Working Agreement and Labor Agreement with disregard to the amount of money, does not take into account of citizenship group of the related parties, at the first level is heard by District Court. Furthermore, article 2a RO mentions that: “A job, whether in part or a whole part is implemented in Indonesia, then Indonesian Judge has the right to hear it”. The type of dispute that can be settled through the court is types of right dispute and individual as well as collective in nature. The procedure for prosecution in District Court concerning this labor affairs is subject to Civil Procedure Law prevailing in Indonesia namely through a process of claim and answer. The decision of District Court to labor issue is in the form of civil sanction.

By remaining to comply with the provisions above, Law No. 22 of 1957 provides authority to Regional Labor Dispute Settlement Committee to settle disputes. Therefore concerning this right dispute in labor affairs there are two bodies or institutions that have authority to settle it, namely District Court and Regional Labor Disputes Settlement Committee. These two institutions can be differentiated as the following:

The party that can file the complain before the Regional Labor Disputes Settlement Committee is only employer and labor, while labor individually files his/her claim before the District Court.

The sanction of District Court is merely a civil sanction, while decision of the Committee in addition to imposing detainment punishment, it can also impose fine.

The decision of District Court can be appealed, cassation and legal review (Peninjauan Kembali). While the party who is not satisfied with Regional Labor Disputes Settlement Committee decision is to submit a complaint to State Administrative High Court, because this Committee Decision is categorized as state administrative decision, and if the party that is still not satisfied with the decision of

Pengadilan Tinggi Tata Usaha Negara (State Administrative High Court), then he/she can file cassation to The Supreme Court.¹⁴

The settlement of non adjudication can be performed through negotiation of the parties in dispute or by involving a third party as mediator, or settle by Regional or Central Labor Dispute Settlement Committee.

It can be seen, in the previous arrangement there were Labor Dispute Settlement Committee existing at central as well as regional levels. The existence of these committees replaced by the Court of Industrial Relation.¹⁵

Under the new Law, labor dispute can be settled out of court and before the court.

Out Of Court Labor Dispute Settlement Is Mandatory

Articles 3 of Law No. 2 of 2004 on Industrial Relation Dispute Settlement require each labor dispute to be settled first through bipartite negotiation, namely direct settlement between company and worker or labor union. If bipartite negotiation fails, the dispute is brought to mediation. If mediation fails, the dispute is continued into conciliation or arbitration or court.

Bipartite Negotiation

Bipartite negotiation is negotiation between labor or labor union and employer to settle labor dispute.¹⁶ This settlement by mutual agreement is also mandated under Law No. 13 of 2003 on Labor Affairs. Under the paragraph 1 of article 136, labor dispute settlement is obligated to be implemented by employer and labor or labor union by negotiation to reach consensus.

The settlement under bipartite procedure is mandatory. This bipartite process shall be completed within 30 days, and if it is more than 30 days one of the parties refuses to negotiate or negotiation cannot reach a consensus, then the negotiation is considered as fail. If negotiation reaches a consensus, then Mutual Agreement is entered

¹⁴ Myra M. Hanartani, "Undang-Undang No. 2 Tahun 2004 tentang Penyelesaian Perselisihan Hubungan Industrial"(Law No. 2 of 2004 Concerning Industrial Relation Dispute Settlement), Bulletin Depneker, June 21, 2004. p. 1

¹⁵ See Basani Situmorang, "Penyelesaian Perselisihan Hubungan Industrial dan Pemutusan Hubungan Kerja" (Settlement of Industrial Relation Dispute and Employment Termination).

¹⁶ Article 1 paragraph 10 of the Law No. 13 of 2003 concerning Labor Affairs.

into which is binding and becomes law for the parties. This Mutual Agreement must be registered in Labor Court in the area where the parties make the Mutual Agreement and if it is not performed by either party then the party who suffer the damage can propose execution request to Labor Court at the area where the Mutual Agreement is registered to obtain execution order.

In the case the bipartite negotiation fails, and then either party or both parties register their dispute to the local institution responsible in labor affairs by attaching evidence that efforts of settlement through bipartite negotiation have been carried out.¹⁷ If the parties fail in settling through bipartite, then before they have the right to settle it through mediation, conciliation or arbitration, first they have to register the dispute to institution responsible in labor affairs.

Furthermore, it is mentioned that after receiving registration from either party or both parties, the institution responsible for labor affairs is obliged to offer to the parties to have consensus in selecting settlement through conciliation or arbitration. In the case the parties do not decide the alternative settlement within 7 (seven) days, then the institution responsible for labor affairs delegates the dispute settlement to mediator.¹⁸

Mediation

Mediation of labor disputes only for settlement of right dispute, interest dispute, work relation termination dispute, and dispute between labor union in one company by negotiation assisted by one or more mediators who are neutral.¹⁹ So this mediation constitutes an institution in charge of settling all types of dispute. Settlement of dispute through this mediation is conducted by mediator who is stationed in every office responsible in labor affairs of Regency/City (article 8) or in other words, those who become mediators are employees of labor office.

The difference from Law No. 22 of 1957 is if previously every dispute is mandatory to go first through a process of mediation, then under the law number 2 of 2004 concerning Settlement of Industrial Relation Disputes (other than right dispute),

¹⁷ Article 1 paragraph 4 of the law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

¹⁸ Article 4 paragraph 3 and 4 of the law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

¹⁹ Article 1 paragraph 11 of the law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

the labor office before hand offers to both parties to select conciliation or arbitration (not directly conducting mediation). If the parties do not decide on the choice through conciliation or arbitration within 7 (seven) days, then the case settlement will be delegated to mediator.

The latest 7 (seven) days after receiving delegation of dispute settlement the mediator must have conducted research on case background and immediately hold mediation session. In the mediation session, mediator can call for witness or expert witness to be present to be asked and heard his/her opinion. In a situation consensus of industrial relation dispute settlement is reached, then mutual agreement is made and signed by both parties and witnessed by the mediator. The agreement have to registered at Industrial Relation Court in under the jurisdiction of the parties.²⁰

In case labor dispute settlement consensus is not reached through mediation, then mediator issue a written suggestion. The parties can accept or reject the said suggestion. If the parties accept it, the mediator must make a Mutual Agreement which is binding both parties. However, if either party or both parties reject the suggestion, then both parties or either party can continue the dispute settlement process of conciliation or arbitration.²¹

It has been explained previously in bipartite negotiation, if the parties fail to settle it through bipartite negotiation then the parties must register such event and then the local office in charge of labor affairs is obliged to offer to both parties conciliation or arbitration. Settlement through conciliation is conducted to settle dispute of interest, work relation termination dispute, or inter labor union dispute, while settlement through arbitrage is conducted to settle interest dispute or inter labor unions dispute.²²

Conciliation

Conciliation related to settlement of interest disputes, work relation termination disputes or inter labor union disputes in one company through negotiation assisted by

²⁰ Article 7 paragraph 3 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

²¹ Article 8 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

²² Article 4 paragraph 5 and 6 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

one or more conciliators who are neutral.²³ Meanwhile, conciliator is one or more persons meeting the requirements as conciliator determined by Minister who functions to perform conciliation and is obliged to provide written suggestion to the disputing parties to settle interest dispute, work relation termination dispute or inter labor unions dispute in one company.²⁴ It can be seen that conciliator comes from the third party, outside the labor office employees. The scope of disputes that can be handled by conciliator does not include right dispute. This aspect rises questions, is the capability of conciliator doubtful in solving right dispute considering the requirements to become conciliator is also quite heavy namely besides possessing at least 6 years of experience in industrial relation field, he/she also has to master legislative regulations in manpower area.²⁵

This settlement through conciliator is started at the latest 7 (seven) days after receiving a request for dispute settlement in writing namely the conciliator must have conducted research on background of the case and at the latest on the eighth day the first conciliation session must be conducted. Conciliator can call for witness or expert witness to be present in the conciliation session to be asked and heard his/her opinion. In situation consensus of labor dispute settlement through conciliation is reached, then a Mutual Agreement is made and signed by both parties and witnessed by conciliator and registered in Industrial Relation Court in District Court in the jurisdiction of the parties making the Mutual Agreement to obtain registration proof deed.

If consensus of labor dispute settlement through conciliation is not reached, then conciliator issues a written suggestion. If both parties accept the said written suggestion, the conciliator is obliged to make a Mutual Agreement which later on be registered at Industrial Relation Court in the area the parties make the Mutual Agreement to obtain registration proof deed. However, if either party or both parties reject the suggestion then either party or both parties can continue the settlement of dispute to the Industrial Relation Court.

²³ Article 1 paragraph 13 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

²⁴ Article 1 paragraph 14 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

²⁵ Article 1 paragraph 19 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

It can be seen that conciliation and mediation are not positioned as alternative dispute resolution (ADR). Under this law, conciliation and mediation are positioned as “inter mechanism” which must be taken by the parties in dispute before they take the case to the Industrial Relation Court.²⁶ The Industrial Relation Court is obliged to return complaint to plaintiff if in filing the claim settlement through mediation or conciliation is not attached.²⁷ This provision prolongs the process and shows there is no significant change if we compare with the old regulations.²⁸

Arbitration

Settlement of dispute by arbitration in general has been regulated under the Law No. 30 of 1999 on Arbitration and Alternative Dispute Settlement; therefore provisions on arbitration under this law constitute special regulations prevailing for dispute settlement in labor affairs.

Arbitration is settlement related to an interest dispute, and inter labor unions dispute in one company, outside the Industrial Relation Court by a written agreement from the parties in dispute. The arbitration award is final and binding to the parties.²⁹ Arbiter of Industrial Relation is referred to arbiter is one or more persons selected by the disputing parties from arbiter list determined by Minister. Arbitration has jurisdiction to settle dispute as concerning interest dispute, and inter labor unions dispute in one company.³⁰

Settlement of labor dispute by arbiter or arbiter panel (maximum 3 persons), should be in writing. The arbiter is obliged to settle labor dispute at the latest 30 (thirty) days after signing the agreement of arbiter appointment. Examination on dispute must be started within at the latest 3 (three) days after signing the agreement of arbiter appointment. Settlement of labor dispute by arbiter must be initiated by efforts to resolve peacefully the disputing parties. If the peace as mentioned in clause (1) is

²⁶ Article 5 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

²⁷ Article 83 paragraph 1 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

²⁸ Daniel Suryana, “Prospek Pengadilan Perselisihan Hubungan Industrial”, http://dansur.blogster.com/prospek_pengadilan_perselisihan.html.

²⁹ Article 1 point 15 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

³⁰ Article 1 point 16 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

reached, then arbiter or arbiter assembly is obliged to make Resolution Deed signed by both parties in dispute and arbiter or arbiter assembly and register the deed to Industrial Relation Court in the area where arbiter holds the resolution.

If the effort to reach resolution fails, arbiter (arbiter panel) continues to arbitration session. In the session, the parties are given opportunity to explain their own opinion and submit evidences. Arbiter (arbiter panel) can call on witness or expert witness to testify before the arbitration session. Decision of arbitration session is determined under the prevailing regulations, convention, custom, justice and public interest. Arbitration award is binding and final. The arbitration award have to be registered at Industrial Relation Court at the area where arbiter issue the award.

Either party can submit nullification request to The Supreme Court within at the latest 30 (thirty) days since arbiter award is issued, if the award is assumed to have the following elements:

- a. A letter or document submitted in examination, after the award is issued, is admitted or stated as forgery;
- b. After award is issued, a decisive or significant document is found, which is hidden by opponent party;
- c. Award is issued base on cheating conducted by either party in examination of the dispute;
- d. Award is issued beyond arbiter's power; or
- e. Award is contradictory to law or regulations.

The Supreme Court grants the nullification, whether the whole part or in part of arbitration award.

Arbitration as the fastest labor dispute settlement system is forbidden to settle right dispute and employment relation termination dispute. This provision closes possibility for employer or labor/labor union to use arbiter service in solving right dispute and employment termination dispute, so that efforts to speed up settlement process of labor dispute is obstructed by clause (15) of Article 1 jo. Article 29 of Industrial Relation Dispute Settlement itself. The authority of conciliator and arbiter is restrained. Under this law mediator and judge of Industrial Relation Court are given authority to settle right dispute and inter-labor unions dispute. While conciliator is given only the authority to settle employment termination dispute, interest dispute, and inter-

labor unions dispute. Meanwhile arbiter is only authorized to settle interest dispute and inter-labor unions dispute.

Dispute Settlement Before The Court

The Industrial Relation Court is a special court established in the area of District Court that is in charge to hear, examine and make a decision to labor dispute.³¹ Then it is confirmed in article 55, Industrial Relation Court is a special court that exists in general court area. According to Law Number 4 of 2004 on Judicial Power it is determined that all matters related to judicial, whether it is related to judicial technique as well as organization, administration and financial aspects are under one roof namely The Supreme Court.

Under the Industrial Relation Disputes Settlement Law, Industrial Relation Court will be established in every Regency/City District Court which is located in every Province Capital which its jurisdiction covers the related province. Industrial Relation Court can also be established in regency/city with certain industrial density through Presidential Decree. For the first time 35 (thirty-five) Industrial Relation Courts are established in 32 provincial capitals and three in areas of industrial density and have quite high dispute potential to occur, such areas are Bekasi, Tangerang and Sidoarjo.

Under the article 56, it is mentioned that Industrial Relation Court has jurisdiction to hear and make decision on:

1. At the first level on right dispute;
2. At the first and final level on interest dispute;
3. At the first level on employment relation termination dispute;
4. At the first and final level on inter labor unions dispute in one company.

Under article 56, the decision of Industrial Relation Court on rights dispute and employment relation termination dispute cassation can be submitted to The Supreme Court. While the decision of Industrial Relation Court on interest dispute and inter-labor unions dispute in one company constitutes the first and final decision.

The other aspect which is specially regulated under this law is provision concerning ad hoc judge and administrative clerk in this labor Court. Moreover, there

³¹ Article 1 point 17 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

also new aspects, which are not common. Under this Law there are provision on exemption of case cost and also exemption of execution cost for complaint with value under Rp. 150 million.³² The provision on case cost exemption actually should be considered well in advance, because allocation of cost for Industrial Relation Court which is not little should be arranged in processing a case.

The judge in this Labor Court consists of career judge and ad hoc judge. Ad hoc judge, his/her appointment is through Presidential Decree on suggestion from The Supreme Court. The Supreme Court proposes ad hoc judge to the President from the names approved by Minister of Manpower, which such names are the proposals from labor unions and employers' association. The appointment of ad hoc judge which is via Department of Manpower or government or executive is raising questions, because under the Law No. 4 of 2004 concerning the Judicial Power requires all matters related to judicial aspects are handled by The Supreme Court.

The requirements to become ad hoc judge in Industrial Relation Court, among others have minimum education of stratum one (not necessarily Law Degree). Only ad hoc judge in the Supreme Court that has mandatory requirement of graduate of Law Faculty.

The process of settlement in Industrial Relation Court uses a Civil Procedure Law used in general court of justice, except for provisions specially regulated under the Industrial Relation Disputes Settlement Law. The sessions of Industrial Relation Court is open for public, except the Judge panel decides otherwise. Submitting a complaint should be attached with settlement summary through mediation or conciliation, otherwise the judge should return the complaint. This Court also receives a complaint in class action type; this is contained in article 84 that mentions a complaint involving more than one plaintiffs can be submitted collectively by providing a special power of attorney.

The judge is obliged to examine the substance of complaint and if there are insufficient data, the judge asks plaintiff to improve his/her complaint. The provision on this aspect is called "examination process", which is carried out before the court process

³² Article 58 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

begins.³³ This similar aspect is found in procedural court proceedings in State Administrative Court. Before entering court session stage; there is a process of administrative research, dismissal procedure, and preparatory examination. This provision is very good to speed up court proceedings because it minimizes possibility of raising argument not related to the main issue (*exceptie*) from the claimant.

In right dispute and/or interest dispute followed by employment relation termination dispute, then Industrial Relation Court is obliged to decide first the case of right dispute and/or interest dispute. The question here is whether procedure of submitting a claim of right dispute and/or interest dispute followed by employment relation termination dispute is combined or not? Because if there is interest dispute followed by employment relation termination dispute, Industrial Relation Court is obligated to settle interest dispute first. If the worker party loses in this dispute, then automatically he/she cannot submit cassation.³⁴

Meanwhile, if the labor loses in the session concerning interest dispute, this party automatically will also lose in the court session of employment relation termination dispute because employment relation termination is interest differences.

Before the Industrial Relation Court, the labor union and employer organization can act by legal proxy.³⁵ It is very good, considering not all labors in Indonesia have capacity to be in court by themselves, either due to lack of money or knowledge.

The judge is obliged to provide decision on labor dispute within at the latest 50 (fifty) days, effective since the first session.³⁶ Such provision can be put aside, namely if there are interests of the parties and/or either party. Either party can forward a request to Industrial Relation Court to speed up the dispute examination and within a period of 7 (seven) days after the receipt of such request. The Head of District Court issues an order on granting or not granting such request.³⁷ Within 7 (seven) days after the issuance of order, the Chairman of District Court has to decide on judge panel, day, place, and time of session without going through examination procedure. The time interval for answering and evidence of both parties, each is determined not more than 14 (fourteen)

³³ Article 83 paragraph 2 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

³⁴ Article 86 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

³⁵ Article 87 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

³⁶ Article 103 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

³⁷ Article 58 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

days.³⁸ Totally for this sped-up dispute hearing, is 42 days. It is only 8 days faster compared to normal court hearings.

Under the Law No. 2 of 2004, case of labor dispute should have been solved within 50 days at the latest in the Court of first instance and 30 days in cassation level at the Supreme Court. In reality, it can be longer than that period.

The following paragraphs will explain some interesting decisions of the new labor court.

Cases on Right Dispute

In *Frisda Hutagalung c.s. v. Head of Perguruan Buddhist Manjusri Foundation* No. 112/G/2006/PHI/Mdn, Frisda Hutagalung and 19 Teachers of Perguruan Buddhist Manjusri sued the Head of Perguruan Buddhist Manjusri Foundation on the grounds, among others, that :

1. The Defendant until that time had not yet paid wages to the plaintiffs in accordance with Article 89 paragraph (1) of Law No. 13 of 2003 on Employment.
2. The Defendant had not provided Worker's Social Security to the plaintiffs in accordance with Article 99 paragraph (1) of Law No. 13 of 2003 on Employment.
3. The Defendant had not paid wage deficit to the plaintiffs arising in employment relation for one and a half years in accordance with Article 56 of Law No. 13 of 2003 on Employment.

For the claims of the Plaintiffs the Defendant explained, among others:

1. The claim of Plaintiffs (Frisda Hutagalung c.s.) was strongly baseless because the Plaintiffs also taught in other school as temporary Teachers or hourly-paid Teachers, so that the Plaintiffs did not have the right to demand minimum wage.
2. The claim of the Plaintiffs to have minimum wage was strongly baseless because minimum wage could only be applied to Labor who worked in a company that employed Labor permanently with working hours of seven or eight hours every day in a week (refer to Article 77 of Law No. 13 of 2003 on Employment).
3. The Plaintiffs were legally wrong to demand the payment of Worker's Social Security from the Defendant, because the Plaintiffs were Hourly-Paid Workers in the school managed by the Defendant and the Plaintiffs also taught in other school so

³⁸ Article 99 of the Law No. 2 of 2004 concerning Settlement of Industrial Relation Disputes.

that the Plaintiffs could not possibly get worker's social security from every school where the Plaintiffs taught as temporary teachers.

The Court in its opinion stated that, the main issue that arises in this case there is a dispute of right between the Plaintiffs and the Defendant because the Defendant did not provide normative rights in the form of wage. The plaintiffs must be given minimum wage for the last 2 (two) years and the Defendant did not provide Worker's Social Security in accordance with Article 96 paragraph (1) f of Law No. 13 of 2003 on Employment, which the Plaintiffs had worked in the Defendant school for 5 until 20 years within a continuous or incessant period.

The Judge Assembly is of the opinion, improvement of honorarium or wage should be based on fairness and appropriateness because the Plaintiffs have dedicated their service in the Defendant school for quite a long time between 5 until 20 years. For that matter the Defendant (financial) capacity should be considered, therefore based on fairness and mutual responsibility between the Defendant as provider of educational services and the Plaintiffs as teachers in Buddhist Manjusri School for continuation of Indonesian children educational process, the Judge Assembly decided to grant the demand for 10% wage increase of the Plaintiffs/Teachers from wage/teaching/lesson hour, and the Plaintiff Frisda as library staff 10% from the wage received every month for the last 2 (two) years (see Article 96 of Law No. 13 of 2003). The Plaintiffs drivers and security guards who obviously work full-time and work only in the Defendant School are entitled to the wage in accordance with stipulation of Provincial Minimum Wage of 2005 and 2006 under the Article 96 of Law No. 13 of 2003.

Furthermore, concerning the worker's social security the Judge Assembly is of the opinion under the Article 99 of Law No. 13 of 2003 jo. Article 14 paragraph (1) letter (a) of Law No. 14 of 2004, worker's social security constitutes the right of every worker and his/her family implemented under the Law No. 3 of 1992, in this situation it is fair if the implementation of worker's social security can be mutually agreed by labor (the Plaintiffs) and employer (the Defendant) with considering the Defendant (financial) capacity.

In Adam Damara c.s. v. PT. Philia Mandiri Sejahtera (the Defendant I) and PT. Jakarta International Container Terminal (The Defendant II) No.

170/G/2007/PHI.PN.JKT.PST., Adam Damara c.s. sued PT. Philia Mandiri Sejahtera (The Defendant I) and PT. Jakarta International Container Terminal (the Defendant II) on the grounds, among others, that :

1. The appointment of the Defendant II by the Defendant I to provide workers of “*Head Truck Operator*” constitutes a contract of work of *outsourcing*.
2. The contract between the Defendant I and the Defendant II violates Article 56 paragraph (2), Article 66 paragraph (1) of Law No. 13 of 2003, therefore, the employment relation of the Plaintiffs and the Defendant I must be stated being transferred to the Defendant II.
3. The Plaintiffs as non-organic employees never received wages. The Defendant only provided financial incentive.
4. Consequently, the court should punish the Defendant I and Defendant II jointly to pay the Plaintiffs’ wage that had not yet been paid since 2003 until May 2007.

In their reply the Defendant I and Defendant II forwarded objection, among others:

1. The Defendant I had paid the Plaintiffs’ wage above the Provincial Minimum Wage and was never late to pay the wage.
2. The Agreement No. HK.56/01/HRD/1/JICT-2004 between the Defendant I and the Defendant II did not violate the Law and had been in accordance with stipulations of the prevailing law and the object of the agreement was not the core business of the Defendant II.

The Judge Assembly in its opinion stated, that because in reality the Defendant was not a legitimate labor service provider company, and the employment relation of the Plaintiffs become employees of the Defendant II, then all legal actions of the Defendant I that performed employment relation termination in October 2005 was an action not based on the law. The party who has the right to terminate employment relation was the Defendant II as the employer of the Plaintiffs, which consequently the action of employment termination should not be binding and null and void. In line with the transfer of such employment relation, to punish the Defendant I and the Defendant II to pay the Plaintiffs’ wage calculated since February 2004.

The action of the Defendant I terminating the employment relation with reason the Plaintiffs conducted a strike constituted a wrong reason because workers’ strike was

the right of workers which had been implemented legitimately under the law merely to obtain normative rights that had not been implemented by the Defendant I and the Defendant II. When conducting the strike the Plaintiffs had informed its plan and time of strike to the Defendant I and the Defendant II.

Can financial incentive be considered the same as wage? the Judge Assembly would quote the definition of wage under the Article 1 (30) of Law No. 13 of 2003 on Employment which mentions wage is:

“the right of labor being received and stated in the form of money as compensation from employer or job provider to labor which is determined and paid under the a work agreement, or regulation, including allowances for labor and his/her family for work and/or service that has been or will be done.”

Articles 88 until 98 of Law No. 13 of 2003 as well as Government Regulation No. 8 of 1981 do not recognize the term of incentive as the same as wage. The two stipulations regulate imperatively that employer is obliged to provide compensation in the form of wage to every labor who has performed his/her duty and obligation.

In **Labor Union of PT. Kartika Mitra Sejahtera v. PT. Kartika Mitra Sejahtera No. 53/G/2006/PHI.SRG.** the Labor Union sued the PT. Kartika Mitra Sejahtera on the grounds, among others, that :

1. The Plaintiffs (24 workers) who had been employed in PT. Mitsubishi Chemical Indonesia for 3 – 7 years continuously to the Defendant under contract system in logistic department, however, contract document was not given (delivered only orally) to the Plaintiffs.
2. The Defendant in employing the Plaintiffs (24 workers) had violated the Law No. 13 of 2003 on Employment, Articles 90 paragraph (1) jo. Article 93 (2) concerning payment of wage amount and payment of wage during holiday determined by the government.
3. The Defendant in employing the Plaintiffs (24 workers) had violated the Law No. 13 of 2003 on Employment, Article 79 paragraphs (1) and (2c) concerning rest break and leave right to the Plaintiffs (24 workers) who had worked for 1 year incessantly.

The Plaintiffs asked the Industrial Relation Court of Banten Province to make decisions, among others:

1. To order the Defendant to give Appointment Letter to the Plaintiffs (24 workers) with its work relation categorized as indefinite time work relation (permanent).
2. To order the Defendant to pay wage to the Plaintiffs (24 workers) which its amount was in accordance with the prevailing minimum wage in Cilegon city (Article 90 paragraph 1 of Law No. 13 of 2003 on Employment).
3. To order the Defendant to pay for the discrepancy in wage payment and leave for 2 years (2005 & 2006) to the Plaintiffs (24 workers) amounting to Rp. 116,724,432.-

The Court has the opinion, that according to workers' data and summary of Negotiation dated 12th May 2006 strengthened by recommendation of Mediator of Cilegon City Employment Office, had adequately proved that the employment period of the Plaintiffs as workers of the Defendant had been more than 2 (two) years, or on average of 4 (four) years.

The Judge Assembly also had the opinion that Definite Time Work Agreement made by the Defendant and the Plaintiffs was not in accordance with provisions of the prevailing regulations, so that under the stipulation of Article 59 paragraph (7) of Law No. 13 of 2003 on Employment, legally such Definite Time Work Agreement be changed into Indefinite Time Work Agreement or (the Plaintiffs) become Permanent Workers of the Defendant PT. Kartika Mitra Sejahtera.

Based on the arguments of claim of the Plaintiffs that were not rejected by the Defendant and based on the evidences submitted by the Plaintiffs of the work of permanent nature and constituted a part of a production process, performed separately in the main activity, these violated Articles 59 and 65 of Law No. 13 of 2003 and Manpower Minister's Decision No. 220/MEN/X/2004.

Under the Article 65 paragraph (4) of Law No. 13 of 2003: "Employment protection and work conditions for Labor in other company is at least the same as employment protection and work conditions in the company providing the work or in accordance with the prevailing regulations."

Furthermore, the Judge Assembly had the opinion, that the Defendant had paid the Plaintiffs' wage below the Cilegon City Minimum Wage in 2005 and 2006.

The Judge Assembly ordered the Defendant to appoint the Plaintiffs (24 workers) with Indefinite Time Work Agreement or as the Defendant's Permanent Workers, and providing identities in the forms of identity card and work clothes. Punishing the Defendant to pay the 2005 and 2006 wage discrepancy of the Plaintiffs an amount of Rp. 78,999,456.-

In **Ruslani v. PT. Coca Cola Bottling Indonesia, No. 25/G/2007/PHI.BDG.** the plaintiff, chairman of Labor Union sued PT. Coca Cola Bottling Indonesia on the grounds, among others, that :

1. The Defendant issued a decision to transfer the Plaintiff to a new position violating the Employment Law. The Plaintiff argued that such transfer was a continuation of employment termination and suspension case experienced by the Plaintiff with intention to weaken and disorganize labor union.
2. The Defendant issued such decision based on illogical reason, i.e., business requirement which was in fact contradictory to the Plaintiff's background and work experience.
3. The Defendant and the Plaintiff had conducted bipartite negotiation two times but failed.
4. The conflict had been submitted to local Employment Office for settlement through mediation but failed.
5. The Plaintiff refused to carry out the Mediator's recommendation because it was in violation with the prevailing employment law.

The Plaintiff asked that the Judge Assembly to agree to make decisions, among others:

1. The Defendant had violated the Employment Law.
2. To order the Defendant to reinstate the Plaintiff in the previous position and restore all rights currently enjoyed by the Plaintiff.

In his argument the Defendant stated that legally the action of the Defendant to transfer his employee constituted the full authority of the Defendant as business entity that could not become the object of dispute of industrial relation for examination and trial and decision of the Labor Court as mentioned in Article 56 of Law No. 2 of 2004, that Industrial Relation Court has jurisdiction only in aspects of: a) Right Dispute, b)

Conflict of Interest, c) Conflict of Employment Relation Termination and d) Conflict between worker unions in one company.

In its Interim Decision the Court decided that it has competency and jurisdiction to examine the case.

The Court has the opinion, that the issuance of the Defendant's letter concerning employment transfer of the Plaintiff to sales audit position constituted a normative violation of Article 28 of Law No. 21 of 2000 stated that "Anybody is prohibited to obstruct of force labor to form or set up, to become organizer or member and to run or not to run the activities of labor union with methods of: a) conducting employment termination, to terminate employment temporarily, to perform demotion or transfer;

The Judge Assembly also had the opinion that the transfer conducted by the Defendant was not in accordance with Article 32 of Law No. 13 of 2003 juncto Article 13 paragraph 2 of Collective Labor Agreement, and with the capacity of the Defendant as chairmen of worker union that could not be transferred in accordance with Article 28 of Law No. 21 concerning the right to organization that had been ratified through Presidential Decree No. 83 of 1998 jo. ILO Convention No. 98 on The Right to Organization and Collective Bargaining ratified under the Law No. 18 of 1956, Article 28 of the 1945 Constitution.

The Judge Assembly made decisions, among others: to grant the claim of the Plaintiff as a whole, to state that the claim was a claim of right dispute as mentioned in Article 56 (a) of Law No. 2 of 2004, to require the Defendant to re-employ the Plaintiff (Ruslani) in his previous position (Traffic Management Supervisor) in PT. Coca Cola Bottling Indonesia in Cibitung – Bekasi.

Case on Interest Dispute

In *PT. Bridgestone Tire Indonesia (BTI) v. Labor Union of BTI Jakarta as The Defendant I and Labor Union of BTI Bekasi as Defendant II and Labor Union of BTI Karawang as the Defendant III*, No. 143/PHI.G/2007/PN.JKT.PST in which the Plaintiff sued the Defendants Labor Unions on the grounds, among others, that :

1. The Plaintiff and Defendants I, II and III had entered into and signed the 2005-2007 Collective Labor Agreement, which is still valid.
2. Article 28 of the CLA regulates Wage Review as follows:

- a. Basic Salary Review is based on annual increase and inflation condition,
 - b. Annual Increase shall be conducted by Employer based on evaluation against work performance of every worker in April every year,
3. Basic Salary Change caused by inflation condition, in principle will be conducted in April every year,
4. Basic Salary Review shall be conducted by Employer through overall evaluation of:
 - a. Inflation rate issued by Central Statistics Agency, b. Current and future company condition evaluation, c. Condition of other companies of the same business, d. General condition and economic situation, e. Opinion of Worker Union.
5. That the Plaintiff is willing to give 8.37% for 2007 wage increase, consisting of: inflation = 5.37% and annual increase = 3.00%.
6. That Defendants I, II and III rejected the 8.37% increase and asking for 17.5% with details: inflation = 5.37%, annual increase = 3.00% and Living Standard Improvement = 9.13%, on the grounds of, among others: (a) 15% of 2006 tire sale increase, (b) 71% of 2006 imported tire sale increase, (c) 56% of imported tire sale price, (d) 178% of 2006 Defendant's net profit increase, (e) that PTH constitutes one of main components in every basic wage negotiation and it has become a normal practice every year with the goal to increase workers' living standard and purchasing power and constitutes a balancing factor or moving investment, (f) that it is very appropriate and natural the Plaintiff to give appreciation to the workers in the form of 9.13% Living Standard Improvement for the progress mutually achieved that can improve workers' welfare and their family which will influence workers' higher work motivation for the Defendant.
7. That in this case Mediator of local Employment Office had issued a recommendation that essentially suggested the Plaintiff to give 14.8% of 2007 wage increase consisting of inflation 5.37%, annual increase 3% and PTH 6.43%. Defendants I-III agreed to accept the Mediator's recommendation while the Plaintiff rejected it because the Defendants' arguments were wrong and not supported by any evidence

and were not in accordance with the CLA that had been jointly agreed and neither had any legal reasoning.

8. That the Plaintiff strongly remained in its standpoint on the ground that if the Plaintiff gives the 14.80% wage increase it will create a very damaging impact to the Plaintiff whether directly or indirectly. Moreover, addition of wage increase factor in the form of Living Standard Improvement should be rejected because it constitutes a unilateral aspiration without mutual concord.

The Plaintiff requested the Judge Assembly to make the following decisions, among others:

1. To state the Mediator's Recommendation has no legal reasons.
2. To state the annual increase in the form of Living Standard Improvement has no legal ground.
3. To reject the 2007 wage increase of 14.80%.
4. To state the 2007 wage increase is 8.37% consisting of 5.37% inflation and 3.00% annual increase.
5. To punish Defendants I, II and III to comply with this decision.

The Defendants I, II and III in their summary of defense explained the followings, among others:

1. That Living Standard Improvement component is based on normal practices that are effective and valid and have become the (unwritten) law in PT. Bridgestone Tire Indonesia supported with evidences (2000 – 2007 data).
2. That the main issue in this case is not a conflict of validity of Living Standard Improvement component but a conflict of magnitude or amount of value of Living Standard Improvement component that has not yet been mutually agreed.
3. That Article 88 of Law No. 13 of 2003 which constitutes the implementation of Article 27 paragraph (2) of the 1945 Constitution which says: *“Every worker is entitled to have income that meets proper living needs for humanity”*, and its elucidation clearly mentions: *“The income that meets proper living needs is the amount of worker's revenue or income from his/her work so that he/she is able to*

meet living needs of himself and his family appropriately that include food and drink, clothing, housing, education, health, recreation and old-age security.

Under the said provisions and under the Article 1347 of Indonesian Civil Code which mentions: *“Aspects which according to normal practices/habits are always included in agreement, are considered to be silently included in the agreement although they are not austere stated”*, the Defendants requested the Judge Assembly to make decisions, among others:

1. To reject the claims of the Plaintiff as a whole.
2. To order the Plaintiff to pay April basic salary increase of 14.80%.

In its opinion the Judge Assembly explained that, under the Article 1 point 20 of the 2005-2007 CLA which says: *“Basic salary is basic reward which is determined by Employer with considerations of (workers’) educational, experience and work performance elements.* The Judge Assembly summarizes that basic salary constitutes the sole discretion of the Plaintiff without involving worker union. Furthermore the Court finds the fact that Living Standard Improvement component clearly and strictly is not included in the CLA which is binding to both parties (Pacta Sunt Servanda, Article 1338 of Indonesian Civil Code or more popularly known as principle of freedom of contract). The Judge Assembly had the opinion that for the good of all parties, noticing that wage increase of other companies in the same business ranging from 4.27% to 11% that also constitutes a determining factor in basic wage review, the ideal 2007 basic wage increase is 10% (ten percent).

Finally, the Court made the following decisions, among others:

1. Mediator’s Recommendation has no legal reasoning.
2. Living Standard Improvement Component in annual wage increase has no legal reasoning.
3. Rejecting the 2007 basic wage increase of 14.80%
4. The 2007 basic wage increase is 10%.

Cases on Employment Termination Dispute

In *Firdaus v. PT. Garuda Indonesia*, No. 01/PHI.G/2006/PN. JKT.PST. the Plaintiff (cabin crew) sued the Defendant PT. Garuda Indonesia, the national flag carrier airline company, on the grounds, among others, that :

1. The conflict had been submitted to Mediator from Local Employment Office, but the Defendant did not follow up the recommendation.
2. The Defendant terminated employment relation with the Plaintiff on a ground that the Plaintiff had conducted a III Degree Disciplinary Violation in the company under the Collective Labor Agreement whereas the Defendant should first issue sanction, written warning. The Defendant directly issued Suspension Letter which was violating Article 161 paragraphs (1) and (2) of Law No. 13 of 2003 that mentioned: “Should a worker violates the stipulations arranged in Collective Labor Agreement, the employer can perform Termination of Employment Relation after issuing consecutively I, II and III Warning Letters to the said worker which each of the Warning Letter shall valid for 6 months otherwise stated differently in the CLA”.
3. The Defendant had admitted issuing such Termination of Employment Relation without first obtaining permission to Industrial Relation Conflict Settlement Institute, this is also against Article 115 paragraph (3) and Article 152 paragraph (1) of Law No. 13 of 2003. Furthermore, Under the Article 155 paragraphs (1) and (2) conducting such action should be null and void.

The Plaintiff requested the Court to make a decision, among others:

1. To state the employment relation termination conducted by the Defendant to become null and void.
2. To order the Defendant to re-employ the Plaintiff into the previous position by methods of invitation within 14 (fourteen) days after the Judge Assembly issued the decision.
3. To state the action of the Defendant was in violation of the stipulations in Article 6, Article 93 paragraph (2) letter f, Articles 150, 151, 152, Article 60 paragraph (4) and Article 161 paragraph (1) of Law No. 13 of 2003 On Employment.
4. To order the Defendant to pay the monthly salary and other rights of the Plaintiff which he usually received.

In his reply the Defendant rejected all of Plaintiff's arguments and explained, among others:

1. Based on the Defendant's investigation the Plaintiff was proven conducting disciplinary violation of carrying other person's goods entrusted to him without following the procedure existing in the company. In addition, such action also proven of inflicting loss to the Defendant.
2. The Defendant explained that during the Plaintiff's assignment as Senior Flight Attendant in flight GA No. 881 from Narita-Japan to Denpasar-Bali the Plaintiff carried entrusted goods in the forms of 4 envelopes from Mrs. Elidawati and they were stated missing in Denpasar. This led to a report from Mrs. ELidawati to the Defendant through Airport Security which later on the police issued a letter to the Defendant asking for assistance to find the Plaintiff.
3. Based on the report the Plaintiff was presumed to have conducted embezzlement in criminal code; and internally this was also a violation of Article 164 paragraph (5) of Collective Labor Agreement which was related to criminal and/or civil code violation. Furthermore this case was published in mass media, i.e., Tabloid Tekape and this violation accordingly resulted in the Defendant's issuance of termination of employment relation.

The Judge Assembly in its opinion, among others, mentioned that under the Article 155 paragraphs (2) and (3) of Law No. 13 of 2003 the employer and worker shall perform their obligation during the decision of Industrial Relation Conflict Settlement Institute had not been made and if the worker does not do so, the employer can issue a suspension letter with obligation of paying the worker's wage and rights usually received. The Judge Assembly also had the opinion that stipulations of employment relation termination in Article 151 paragraph (3) of Law No. 13 of 2003 constituted an absolute condition that must be carried out by the employer, otherwise under the Article 155 paragraph (1) of Law No. 13 of 2003 such termination shall be null and void.

Then the Judge Assembly issued the decision, among others: 1. To grant the claims of the Plaintiff in part, 2. To state that the action of the Defendant was against the Law No. 13 of 2003 On Employment, 3. To state the termination of employment relation conducted by the Defendant to be null and void, 4. To order the Defendant to

invite and re-employ the Plaintiff into his previous position, 5. To punish the Defendant to pay wage discrepancy during suspension, to pay the Plaintiff's regular salary and to pay religious holiday bonus of 2004 and 2005.

In *Hendrik Suhata v. PT. Yamaha Musical Products Indonesia (YMPI)*, No. 44/G/2006/PHI.Sby the Plaintiff sued the Defendant PT. Yamaha Musical Products Indonesia on the grounds, among others:

1. That while doing his usual work as operator of forklift unintentionally the Plaintiff when moving the goods, they fell off to the ground that caused 39 of 120 items need repair. Those 39 items were repaired by 2 other production workers in 2 – 3 hours and they had been in normal good conditions. Such incident brought the Plaintiff called by Personnel Management of PT. YMPI and stated that the Plaintiff violated Article 39 paragraph 52 of Collective Labor Agreement (CLA) mentioning “Employee is prohibited recklessly or intentionally to damage or leave in hazardous situation items belonged to the company that inflicts financial loss to the company. This was a serious offense/violation and the Defendant would impose sanction of employment termination violation of Article 44 of CLA jo. Article 158 of Law No. 13/2003 concerning serious mistake.
2. The Plaintiff objected the charge mentioned by the Defendant in violation of Article 39 paragraph 52 of CLA as that was unintentional.
3. That Article 158 of Law No. 13/2003 concerning serious mistake was not legally binding under the Decision of Constitutional Court No. 12/PUU I/2003, so that the sanction of termination applied by the Defendant was contrary to the law.
4. That such case had been negotiated in bipartite forum by the Defendant and the Plaintiff, however, it failed, of which later on the Defendant issued a suspension letter to the Plaintiff. To settle the conflict both parties had asked mediator from Pasuruan Regency Employment Office which the mediator issued a recommendation. The Plaintiff refused to follow the recommendation since in it there was no legal base.
5. That after that the Defendant discontinued the payment of wage and other rights that should have been received by the Plaintiff on the ground the case was still in the process of Industrial Relation Conflict Settlement. This was clearly arbitrary conduct

through imposing illegal sanction, violating Article 155 of Law No. 13 of 2003. The Plaintiff reported this to the Supervisor of Employment in Pasuruan Regency Employment Office.

6. That until that time the Defendant never issued I, II and III Warning Letters to the Plaintiff so that there was no valid reason for the Defendant to perform employment relation termination.

The Plaintiff requested the Judge Assembly to make decisions, among others:

1. To make interim decision which contains, to order the Defendant to pay wage and all rights of the Plaintiff during suspension period and also the fine due to delayed in payment.
2. To order the Defendant to pay wage and rights of the Plaintiff although there is cassation.
3. To order the Defendant to re-employ and rehabilitate all of the Plaintiff's rights.

In his reply the Defendant forwarded among others:

1. The Plaintiff did not follow his superior's instruction not to drive the forklift because the Plaintiff had no forklift driving permit and also the Plaintiff did not first ask for permission to his superior although the superior was in the same work area and violated the stipulations of Pasuruan Regency Employment Office.
2. That previously the Defendant had put an announcement on responsible persons for driving forklifts and attached it on every forklift for all employees to know.
3. That employment termination conducted by the Defendant was under the Article 44 of CLA and under the Article 1338 of Indonesian Civil Code that mentioned all legally made agreements shall valid as the Law to those who made them. Furthermore, the CLA had been registered in the local employment office.
4. That the Defendant had not yet paid the wage of the Plaintiff because Article 155 of Law No. 13 of 2003 did not regulate on procedure of wage payment for employee under suspension for employment termination process. Similarly the Government Regulation No. 8 of 1981 on Wage Protection that did not regulate wage payment for employee under suspension.
5. That in the past the Plaintiff had conducted driving a forklift violating the existing procedure that caused his fellow worker suffered an accident and a first warning letter was given to the Plaintiff; and some years later the Plaintiff did the same again,

driving forklift recklessly that caused damage of goods belonged to the Defendant and the third Warning Letter was given. Therefore the Defendant did not want to accept the Plaintiff to work again in the company of the Defendant.

In its opinion the Judge Assembly mentioned, among others: Article 161 of Law No. 13 of 2003 explained that company could terminate employment after three Warning Letters had been given to the worker who violated Work Agreement, Company Regulation or CLA; and that each warning letter should survive maximum 6 (six) months, otherwise stated differently.

Eventually the Decision of the Court consisted of, among others:

1. To grant the claims of the Plaintiff in part.
2. To punish the Defendant to pay wage and all of the Plaintiff's rights during the suspension period.
3. To order the Defendant to re-employ the Plaintiff and to rehabilitate all of his rights which he until that time usually received.

In *Iing Adiwijaya v. PT. Galenium Pharmasia Laboratories*, No. 22/G/2007/PHI.PN.JKT.PST. the Plaintiff sued the Defendant PT. *Galenium Pharmasia Laboratories* on the grounds, among others:

1. That the Plaintiff and 58 other employees on 5th September 2006 grouped in Labor Union conducted a strike which is the fundamental right of labor under the Law No. 13 of 2003 On Employment, Law No. 21 of 2000 on Labor Union and ILO Convention on the Right to Strike and Right for Association with demands for Normative Rights.
2. That on 26th August 2006 Chairperson of Worker Union to fulfill the requirement of Articles 137 and 140 of Law No. 13 of 2003 had submitted a letter informing the strike to the management of the Defendant and the related institutions (Head of Employment Office, local Police Station, Head of Bogor Regency, Bogor Resort Police, Jakarta Police Headquarter).
3. The demands of the strike, among others: a. asking the company to immediately make CLA, b. Right and Freedom for association and organization without being intimidated and discriminated, c. recognition of Labor Union, d. Assistance and facilities for Labor Union activities, and e. involving worker union in making CLA.

4. That on 4th September the Employment Office invited both the representative of labor and the Defendant to negotiate. However, they failed to reach an agreement. Meanwhile the Defendant issued a letter containing a threat to impose sanction of employment termination for workers who would perform the strike.

The Defendant responded, among others:

1. That the strike conducted by the Plaintiff with his fellow workers was illegal because the workers did not invite the Defendant for negotiation to discuss the Plaintiff's wishes.
2. That because the strike was illegal so the Defendant issued a letter on 4th September 2006 instructing all workers to work otherwise a sanction would be imposed as regulated in the Company Regulation, allowing the Defendant to perform employment termination.
3. That in fact the action conducted on 5th September 2006 was not a strike but a street rally and combined with strong oration producing harsh words damaging the Defendant materially and immaterially and even tended to a crime of libel/defamation.

The Judge Assembly in its opinion stated the followings, among others:

1. Article 86 of Law No. 2 of 2004 On Industrial Relation Conflict Settlement mentions that *"In situation where right dispute and/or conflict of interest followed by conflict of employment relation termination, then The Industrial Relation Court has to first decide the case of right dispute and/or conflict of interest"*.
2. Article 23 of Law No. 21 of 2000 explains that *"Organizer of Labor Union, federation and confederation of labor union that has obtained registration must inform in writing the company according to its level"*.
3. That Article 25 of Law No. 21 of 2000 mentions that *"Labor Union, federation and confederation of labor union that has possessed registration has the right to, among others, a. make CLA with the employer, b. represent workers in solving industrial dispute."*
4. That according to the evidence provided before the court it was proven that the company regulation was made unilaterally by the Defendant without involving the Labor Union, and that it had been renewed also unilaterally. It implied that the Defendant did not recognize the existence of labor union. Consequently the Judge

- Assembly had the opinion that the Defendant was proven to be anti Union and this constituted violation against Article 28 of Law No. 21 of 2000 and ILO Convention No. 87 On Freedom for Association and Right Protection for Organization and for Collective Bargaining that have been ratified by the government of the Republic of Indonesia under the Presidential Decree No. 83 of 1998 and Law No. 18 of 1956.
5. That under the Article 140 of Law No. 13 of 2003 concerning the requirements of conducting a strike and as it was proven before the court then the strike conducted by the Plaintiff had been in accordance with the procedure regulated in the prevailing regulations, and that under the Article 144 paragraph (4) which stated that *“if the negotiation failed, then the officer of the local employment office shall immediately submit the problem that causes the strike to industrial relation conflict settlement institution”* (not to the Defendant), whereas what happened was the Defendant stated that the strike was illegal before there was a Decision of Industrial Relation Conflict Settlement Institution.
 6. That Article 143 of Law No. 13 of 2003 mentions (1) *“Nobody can obstruct the workers/labor and labor union to exercise the right to strike that is conducted legally, in good public order and peacefully, and (2) “Anybody is prohibited to arrest and/or to detain labor and organizers of labor union who perform a strike legally, in good public order and peacefully according to the prevailing regulations”*. So that the Judge Assembly was of the opinion that the action conducted by the Defendant by issuing the letter dated 4th September 2006 containing a threat can be construed as obstructing the strike, which violates against Article 143 of Law No. 13 of 2003 and ILO Conventions No. 87 and No. 98 ratified by the government of the Republic of Indonesia under the Presidential Decree No. 83 of 1998 and Law No. 18 of 1956.
 7. That Article 144 of Law No. 13 of 2003 mentions that the Company is prohibited to impose sanction or rebuttal action to such strike in any forms whatsoever to the workers during and after the strike.

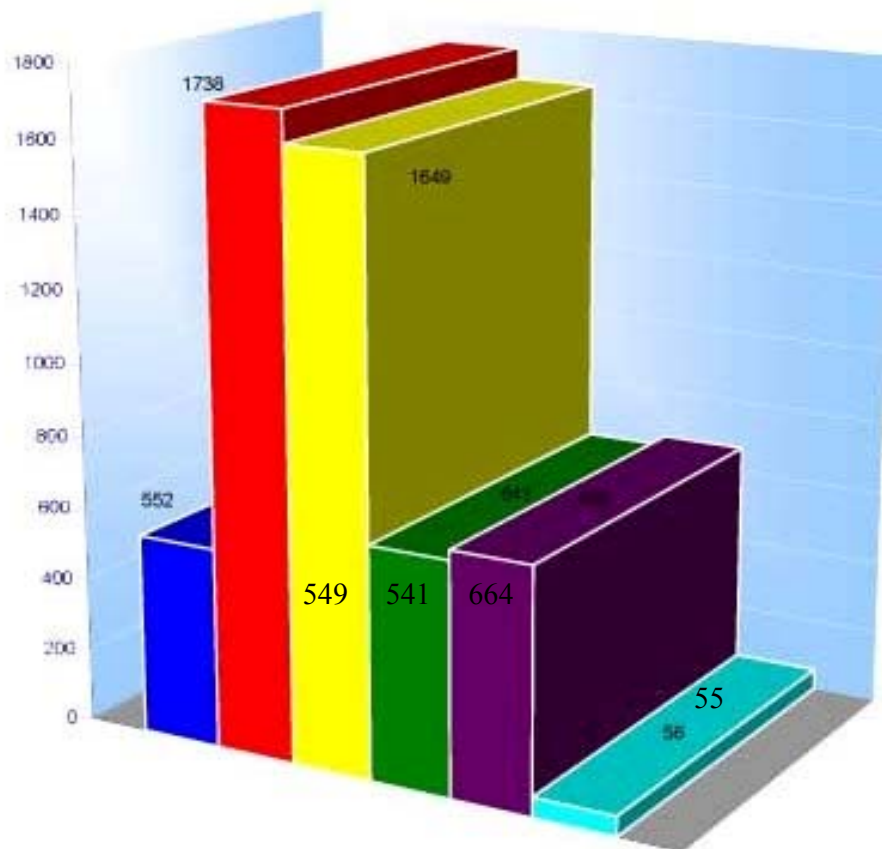
The Judge Assembly granted the claims of the Plaintiff in part, determined the Defendant’s letter dated 4th September 2006 and Suspension Letter dated 11th September 2006 as null and void, and punished the Defendant to re-employ the Plaintiff into his previous position.

Labor Court Decisions in 2007

Since 14th January 2006, the Chief Justice of Supreme Court officially established industrial relation courts in 33 provinces all over Indonesia, until February 2007 there are 250 case in West Java province concerning employment relation termination cases, 222 cases are submitted by labor and the rest are submitted by companies.³⁹

Meanwhile in Jakarta until January 2007 there were 231 cases have been submitted to the new labor court.⁴⁰

The following graphics will show the number of cases at Labor Court in 33 Provinces of Indonesia in 2007.



Source :

www.badilum.info/index.php?option=com_content&view=article&id=110&itemid=55

³⁹ “250 Perusahaan PHK karyawan” (250 Companies Terminate Their Labor Employment), *Pikiran Rakyat*, February 16, 2007.

⁴⁰ “PHI Jakarta” (Jakarta Industrial Relation Court), *Hukum Online*, January 22, 2007.

The graphics shows 552 remaining cases of 2006 (blue). Until the year of 2007 the incoming cases are 1,730 cases (red). Of that number the cases that have been solved in 2007 are 1,549 cases (yellow). While the remaining not-yet-solved cases of 2007 are 541 (green). The cases brought to appeal to the Supreme Court are 664 (plum). Finally, the total amount of cases which submitted for re-examination to the Supreme Court is 55 cases.

Conclusion

Settlement of labor disputes can be conducted before the court and out-of-court such as mediation, conciliation and arbitration.

Individual labor can become a party in settlement of dispute. This is certainly different from that of Law No. 22 of 1957 and Law No. 12 of 1964, where those who can become a party in a labor dispute are only worker union and employer.

This new Law of Industrial Relation Dispute Settlement determine the duration of labor settlement, which previously has never been mentioned. The problem is, in the old laws, labor settlement in P4D (Regional Labor Dispute Settlement Committee) and P4P (Central Labor Dispute Settlement Committee) the time is not limited.

The time limit for mediation, conciliation, and arbitration is maximum 40 days respectively. While settlement at the Industrial Relation Court must complete within maximum 50 days, and in the Supreme Court is at the longest 30 days. However, in fact that duration can be longer then that period.

The requirement for hiring lawyer service in labor dispute indeed has become a burden for labors, because lawyer's fee is quite high. Previously labor can give power attorney to labor union.

There is a difference of jurisdiction between the labor court and the arbitration, under this law. Court has jurisdiction to settle all types disputes, such as right dispute, interest dispute, employment relation termination dispute and inter labor unions dispute. While the jurisdiction of arbitration is limited to interest dispute and inter labor unions dispute. The parties who wish to resolve employment relation termination dispute or right dispute cannot settle it in arbitration. They have to take the case to labor court. Actually majority labor dispute is employment relation termination dispute and right dispute.

The new Indonesian Labor Court has to prove itself as efficient institution on labor dispute settlement. This Court should be competent, honest, and independent.
