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Paradigmatic Problems of Industrial Relation Dispute Settlement on the Perspective of Pancasila Industrial Relations

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Abstract
Act Number 2 of 2004 Concerning the Settlement of Industrial Relations Disputes (PPHI Act) has several paradigmatic issues. It has been almost two decades since the PPHI Act went into effect. To adapt to shifting needs and consider changes, amendments have never been implemented. The impartiality of mediators who are not chosen by the disputing parties, the existence of ad hoc judges who are not law graduates, inconsistent standards relating to one's ability to testify in court, government interference, punishments, etc. are the fundamental issues. These facts emphasize that the Pancasila Industrial Relations Paradigm is not followed by the PPHI Act as a legislative ideal. It is not surprising that the justice and certainty that workers hope for are only dreams. Laborers no longer hold a strategic position as actors and objectives of national development because they have normatively become victims of injustice in industrial relations. In addition to

identifying the normative inconsistencies between the Pancasila Industrial Relations Principles and the PPHI Act, this research aims to promote a shift toward a more just and equitable approach to resolving industrial relations disputes. This study belongs to juridical normative research by adopting the legal regulations as the object. It applies statutory, conceptual, and comparative approaches. The results show that the PPHI Act has paradigmatic problems. Essentially, it does not adhere to the values of Pancasila industrial relations. Thus, reformulation is highly recommended.

Keywords
Legal Ideals, Paradigm, Pancasila Industrial Relations, Reformulations

Introduction

The increasing and growing industry in Indonesia requires an effective and flexible work system to support and maximize the company's operational activities. This system involves the relationship between employers and workers/laborers, who have different views on what flexibility in the employment relationship is. In industrial relations, this difference of opinion can lead to conflict. Therefore, strategically, the implementation of industrial relations will always depend on the laws that regulate the methods of resolving labor disputes.[1]

Basically, disputes can be resolved by the parties themselves. If this proves unsuccessful, either party or the state can provide a third-party to facilitate resolution. The official venue for dispute resolution in modern societies controlled by the state is typically the judiciary. The Act No. 2 of 2004 on the Settlement of Industrial Relations Disputes (PPHI Act)[2] is one of the many changes that have been made to meet

[1] Wahyudi Siswanto, Narita Adityaningrum, and Reni Dwi Purnomowati, "Pelembagaan Lks Bipartit Di Tingkat Perusahaan Sebagai Mekanisme Upaya Pencegahan Perselisihan Hubungan Industrial Di Tempat Kerja," *Jurnal Multidisiplin Indonesia* 2, no. 8 (2023): 1922–31.

[2] Rai Mantili, "Konsep Penyelesaian Perselisihan Hubungan Industrial Antara Serikat Pekerja Dengan Perusahaan Melalui Combined Process (Med-Arbitrase),"

the needs of today's Indonesian society for normative settlement of industrial relations disputes. Based on Article 57 of Act No. 2 of 2004, the procedural law that applies to the Industrial Relations Court is the civil procedural law applicable to courts in the general judicial environment, except for those specifically regulated by Act No. 2 of 2004.[3]

The existence of the Industrial Relations Court is regarded as crucial and fundamental since the court is not only supposed to be an institution with independence and integrity but also one that can offer equitable services to all tiers of society, particularly workers.[4] In an effort to fulfill one of the functions of the rule, Aristotle stated that "a rule of law is a state that stands above the law by guaranteeing justice to its citizens".[5] One of the components of society in the working relationship between the employer and the worker is labor.

In the process of producing goods and services, labor is not only a resource but also an asset that cannot be separated from the profits to ensure business continuity. Therefore, existing work relations need to be maintained sustainably in harmonious, dynamic, fair, and dignified industrial relations atmosphere.[6]

In the perspective of industrial relations, the existence of labor and employers' relations is important and fundamental. In other words, the stability of the company, which in turn might affect the overall business climate, is greatly influenced by the harmony of the relationship. It is difficult to completely avoid the emergence of industrial relations issues, regardless of how amicable the working relationship between workers and employers may be. Therefore, a set of laws governing labor dispute settlement mechanisms occupies a strategic position. Bearing in mind

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Jurnal Bina Mulia Hukum 6, no. 1 (2021): 47–65, https://doi.org/https://doi.org/10.23920/jbmh.v6i1.252.

3 Fahmi Faisal, "Mekanisme Penyelesaian Perselisihan Secara Litigasi Dalam Sistem Perselisihan Hubungan Industrial," *Wasaka Hukum* 7, no. 2 (2019): 299–330.

4 I Nyoman Nurjaya, "Indonesian Labour Law Development and Reform: The Years of Ratifying Fundamental Human Rights Defined within the ILO Core Conventions," *US-China Law Review* 7 (2010): 42.

5 Nevey Varida Ariani, "Gugatan Sederhana Dalam Sistem Peradilan Di Indonesia," *Jurnal Penelitian Hukum P-ISSN* 1410 (2018): 5632.

6 Sunarno Sunarno, "Beberapa Masalah Pada Perjanjian Kerja Waktu Tertentu Dan Solusinya," *Jurnal Wacana Hukum* 8, no. 2 (2009): 23529, https://doi.org/https://doi.org/10.33061/wh.v8i2.310.

the strategic position of the set of laws that regulate the mechanism for resolving industrial relations disputes, Act No. 2 of 2004 concerning Settlement of Industrial Relations Disputes (hereinafter referred to as the PPHI Act) shall reflect the dynamics of aspirational developments as an effort to support development of business world. It is stated in the preamble to the PPHI Act:[7]

> *"That the issue of industrial relations disputes has become more complicated and prevalent in the age of industrialization, necessitating the creation of organizations and mechanisms that can settle these disputes fast, precisely, fairly, and inexpensively."*

Furthermore, the General Explanation states:[8]

> *"The laws and regulations governing the resolution of industrial relations disputes have not provided a fast, exact, fair and inexpensive resolution."*

Departing from the goals of the PPHI Act, it is expected to be able to encourage the realization of a fast, appropriate, fair, and inexpensive settlement of industrial relations disputes by replacing old laws and regulations that are considered unable to realize a fast, exact, fair, and affordable settlement of industrial relations disputes. Thus, the issue of whether the PPHI Act can realize and encourage the resolution of industrial relations conflicts swiftly, precisely, equitably, and affordably as a replacement for outdated rules arises. The PPHI Act is a manifestation of employment for workers and reflects the values of Pancasila's industrial relations as a paradigm.

The fast, precise, equitable, and affordable industrial relations dispute resolution system is the essence of industrial relations adopted in Indonesia, namely Pancasila Industrial Relations (hereinafter referred to as HIP), which was initiated at the National Workshop on December

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7 "Act Number 2 of 2004 Concerning Settlement of Industrial Relations Disputes" (2004). The Preamble section letter (b)

8 Act Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. General Explanation Section

4–7, 1974, followed by representatives from labor and worker organizations, employers' organizations, government representatives, and elements of universities. HIP is the relationship between actors in the process of producing goods and services (laborers, employers, and the government) based on values that are manifestations of the entire precepts of the Pancasila and the 1945 Constitution and grow and develop on the basis of national personality and national culture.

The issue is whether or not the substance of the PPHI Act has accommodated the basic values of the conception of industrial relations in the proposed industrial relations dispute resolution mechanism. The Industrial Relations Court, often known as PHI, did not function properly. It happens due to several factors. For instance, there is only one PHI in each province, which makes it too far away. In addition, the PHI is too rigid, meaning that it relies heavily on civil procedural law. As a result, it happens frequently that worker claims are denied due to format issues or other systematic mistakes, such as those involving powers of attorney. In fact, it should be remembered that workers and employers do not have the same economic condition (economic position). Commonly, workers become lawyers for themselves. Due to their limitations, workers may not necessarily understand the procedural rules. In addition, PHI decisions are obtained in stages. It means if, in the first-degree, one-party wins, and then there is still an opportunity for the other party to file an appeal or cassation. This problem is certainly burdensome for workers, who often do not have adequate economic conditions to take such a long litigation route.[9]

The existence of such PHI seems to violate the principles of justice. The Indonesian judiciary holds simple, fast, and affordable principles. This principle is depicted in the provisions of Article 2, Paragraph 4, of Act No. 48 of 2009 on the Power of the Judiciary, which stipulates that "justice takes place in a straightforward, fast, and inexpensive manner"[10]

Additionally, these points should be emphasized in relation to the PHI Act's substantive weaknesses: the concept of dispute, the neutrality of mediation, the authority of the mediator, limitations on the authority

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[9] Haikal Arsalan and Dinda Silviana Putri, "Reformasi Hukum Dan Hak Asasi Manusia Dalam Penyelesaian Perselisihan Hubungan Industrial," *Jurnal HAM* 11, no. 1 (2020): 39–49,

[10] Rahadi Wasi, "Kajian Ontologis Lembaga Mediasi Di Pengadilan," *Jurnal Penelitian* 257 (2016): 257–58, https://doi.org/DOI: 10.20473/ydk.v31i1.1959.

of the conciliator and arbitrator, bureaucracy, regulatory conflicts regarding legal standing, the nature of the trial, the trial paradigm, the presence of ad hoc judges, and sanctions. These various problems confirm the issue of industrial relations dispute settlement arrangements that are inconsistent with the industrial relations paradigm of Pancasila.

This research aims to measure, evaluate, find, and explain the consistency of industrial relations dispute settlement arrangements based on Act Number 2 of 2004 concerning Industrial Relations Disputes Settlement towards the Pancasila Industrial Relations paradigm. Besides, choosing the appropriate regulatory framework is also necessary for ensuring that the resolution of labor disputes follows the Pancasila Industrial Relations paradigm.

According to the Head of the FKPPI State Defense Agency, with reference to the recapitulation of cases reviewing the Law (UU) registered at the Constitutional Court (MK) from 2003 to 2021, there were 1,449 cases that were filed. From this number, the Constitutional Court has made 1,401 decisions. A total of 269 lawsuits, or around 19.2 percent, were granted. Bamsoet states that "it shows that there are a number of laws and regulations that conflict with the constitution, and they certainly conflict with Pancasila. Because all legal norms regulated in the constitution are sourced from and inspired by Pancasila."[11]

Based on the foregoing explanation and argumentation, it is deemed essential and important to further research and address legal issues with the following title: *Paradigmatic Problems of Industrial Relation Dispute Settlement on The Perspective of Pancasila Industrial Relations* in order to provide legal prescriptions within the framework of improving laws and regulations in the field of industrial relations dispute settlement.

The research poses two pivotal questions aimed at scrutinizing the alignment between the current framework for resolving industrial relations disputes and the principles of Pancasila Industrial Relations. Firstly, it delves into whether the existing structure, as delineated in Act Number 2 of 2004 concerning the Settlement of Industrial Relations

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[11] Ujang Sunda, "Dipaparkan Bamsoet: Duh Masih Banyak UU Yang Bertentangan Dengan Pancasila," Rakyat Merdeka, 2021, tps://rm.id/baca-berita/parlemen/77488/dipaparkan-bamsoet-duh-masih-banyak-uu-yang-bertentangan-dengan-pancasila.

Disputes, resonates with the core tenets of Pancasila Industrial Relations. This inquiry seeks to assess the coherence between the statutory provisions and the foundational values encapsulated within Pancasila, the philosophical basis of Indonesia's socio-political landscape.

Secondly, the research endeavors to identify an appropriate conceptual model for harmonizing the resolution of industrial relations disputes with the paradigm of Pancasila Industrial Relations. This involves exploring frameworks that not only adhere to the legal stipulations but also uphold the principles of justice, equity, and harmony as espoused by Pancasila. By examining alternative approaches and conceptual constructs, the research aims to propose a refined arrangement that embodies the spirit of Pancasila while effectively addressing the complexities inherent in industrial relations disputes. Through these inquiries, the research seeks to contribute to the ongoing discourse on enhancing the efficacy and alignment of industrial relations mechanisms with Indonesia's foundational principles, thereby fostering a more equitable and harmonious labor environment.

In the further, concerning to method of this research, in line with Sunaryati Harotono, legal research is a daily activity for law graduates. Normative legal research can only be carried out by law graduates who are deliberately educated to understand and master the legal discipline.[12] Research aims to reveal the truth systematically, methodologically, and consistently, including legal research. Legal research is different from social research because law does not fall into the category of social science. Legal science is *sui generis*[13], meaning that law is a science of its own. This research is normative legal research[14] i.e., research aimed at producing arguments, theories, and new concepts as prescriptions to answer legal issues, which are carried out by reviewing and analysing statutory provisions and other legal materials. To obtain the objective, this research applies three approaches: the statutory, conceptual, and comparative approaches.

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[12] Sunaryati Hartono, *Penelitian Hukum Di Indonesia Pada Akhir Abad*, 2nd ed. (Bandung: Citra Aditya Bhakti, 1994).

[13] Philipus M Hadjon, "Argumentasi Hukum," 2008.

[14] Peter Mahmud Marzuki, "Penelitian Hukum," *Jakarta: Kencana Prenada Media* 55 (2005).

The statutory approach is taken by examining laws and regulations, especially those governing labor relations and industrial relations dispute settlement. Its result is used as an argument for solving the legal issues faced. Moreover, this approach is also applied to test the coherence and consistency of various laws and regulations against the HIP paradigm as a value and parameter. The conceptual approach is carried out by tracing the views and doctrines that have developed in the science of law, originating from the opinions of experts or legal doctrines in the field of labor relations and industrial relations dispute resolution. Comparative approach is one way of normative research to compare legal institutions in one legal system with other legal institutions that have something in common.[15] A comparative approach is carried out by comparing the arrangements for resolving industrial relations disputes in Japan and China. Japan is the choice, considering that in the land of the rising sun, the values of harmony are still the basis of thought put forward in resolving industrial relations disputes. Thus, it is considered very functional to contribute ideas within the framework of enriching the concept of non-litigation. Meanwhile, China prioritizes controlling conflict by prioritizing aspects of certainty. It is expected that with these three types of approaches, the results of the analysis will be able to answer the legal issues raised by the research as prescriptions that can be recommended to legislators, especially for revising or forming new laws and regulations in the field of industrial relations dispute settlement.

Consistency of Industrial Relations Dispute Settlement Arrangements towards Pancasila Industrial Relations Paradigm

Consistency is obedience,[16] and it denotes compliance of the provisions in the PPHI Act with Pancasila values as legal ideals in the context of regulating industrial relations dispute resolution using the

[15] Raden Mas Try Ananto Djoko Wicaksono, "Analisis Perbandingan HukumPenanaman Modal Asing Antara Indonesia Dengan Vietnam (Tinjauan Dari Undang-Undang No. 25 Tahun 2007 Tentang Penanaman Modal Dan Law No. 67/2014/QH13 On Investment)," *Jurnal Al Azhar Indonesia Seri Ilmu Sosial* 2, no. 1 (2021): 7–23, https://doi.org/http://dx.doi.org/10.36722/jaiss.v2i1.509.

[16] P N Balai Pustaka, "Kamus Besar Bahasa Indonesia," 2001.

Pancasila industrial relations paradigm. This concept refers to the views of Hans Kelsen. Hans Kelsen, the founder of pure legal theory, argues that legal norms always exist in a hierarchically structured system and that one legal norm and another should not always conflict. Everything stems from one large system, which is a fundamental norm (ground norm),[17] namely the constitution.[18] With the establishment of Pancasila as a *Staatsfundamentalnorm*, the formation of law, application, and implementation cannot be separated from the values of Pancasila.[19] The legality of Pancasila as a legal ideal used as a measuring tool in this research is contained in the constitution, namely the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution).

1. Pancasila Industrial Relations Paradigm in Resolving Industrial Relations Disputes

To comprehend the essence of this legal research, it is required to first define Pancasila Industrial Relations. It includes comprehending the significance of the legal paradigm. A paradigm is an example; *tasrif;* rules used to describe clusters of systems of thought; the case form and solution pattern.[20] The definition of paradigm in the Indonesian dictionary published by Balai Pustaka is "a frame of mind; a list of all formations of a word that shows the conjugation and declension of the word; modals in scientific theory; a framework of thinking.[21] Meanwhile, a paradigm, according to Kuhn, might be viewed as a form of 'worldview' for a scientific community. There are similarities in basic assumptions, agreement on the conceptual framework, methodological rules, and analytical procedures in viewing reality.[22] According to the preceding definition, the legal paradigm is a conceptual framework that

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[17] Dede Agus, "Eksistensi Hubungan Industrial Pancasila Pasca Disahkannya Peraturan Pemerintah Pengganti Undang-Undang Cipta Kerja," *Jurnal Ius Constituendum* 8, no. 1 (2023): 87–100.

[18] Fuady Munir, "Teori-Teori Besar (Grand Theory) Dalam Hukum," *Jakarta: Kencana*, 2013.

[19] Muhammad Fikri Hanafi and Sunny Ummul Firdaus, "Implementasi Teori Hans Nawiasky Dalam Peraturan Perundang-Undangan Di Indonesia," *Souvereignty* 1, no. 1 (2022): 79–83.

[20] Pius A Partanto and M Dahlan Al Barry, "Kamus Ilmiah Populer," *Surabaya: Arkola* 37 (1994): 23.

[21] Balai Pustaka, "Kamus Besar Bahasa Indonesia." p.828

[22] Ifdhal Kasim, *Gerakan Studi Hukum Kritis* (INSISTPress, 1999).

includes methodological instructions as well as analytical approaches for viewing the reality of a legal product. The legal product in this case is the PPHI Act.

The notion of industrial relations cannot be separated from the aspects of entrepreneurs and workers, where they are the party with the funds and the goal of the business to make a profit. Workers, or laborers, are parties who work to manage a business in exchange for compensation or rewards. Article 1 of Act Number 13 of 2003 Concerning Employment defines industrial relations as a system of relationships formed between actors in the process of producing goods and/or services consisting of elements of entrepreneurs, workers, and government based on Pancasila and the 1945 Constitution. Industrial relations are a relational structure that aligns entrepreneurs and workers as complementary partners in order to achieve mutual goals. In addition to the aforementioned factors, there is a government in the Indonesian employment system that defends and protects the parties. To foster peaceful work interactions between employers and workers, the government issues signs in the form of labor regulations.[23]

The above-mentioned industrial relations process does not always go well; there are occasions when disagreements emerge between employers and workers or laborers, whether over rights, interests, employment termination, or disputes between labor unions inside a corporation. All of the above are industrial relations disputes, as defined in Article 1 Number 1 of PPHI Act, which states that industrial relations disputes are differences of opinion that result in conflict between employers or a combination of employers and workers or laborers or trade unions or labor unions due to disputes over rights, disputes over interests, employment termination disputes, and disputes between trade unions or labor unions within one country.

Rudolf Stamler explains that the law derives its validity from the legal mind, also known as *rechtsidee*,[24] and uses legal ideals as the basis for enforcing legal norms in society. Legal norms that do not align with or contradict these ideals are no longer enforceable. In Indonesian labor

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[23] Sri Subiandini Gultom, *Aspek Hukum Hubungan Industrial* (Hecca Publishing, 2005).

[24] Ayu Putri Rainah Petung Banjaransari, "Investment Effect on Wage System in Pancasila Industrial Relations Based on Job Creation Law," *Jurnal Hukum Prasada* 9, no. 1 (2022): 45–52.

law, the ideals of Indonesian law, namely Pancasila, become the guide and guide the essence of labor law norms, including those related to the relationship between employers and workers.[25] The ideals of Indonesian law, namely Pancasila in the relationship between employers and workers, become a guide in the regulation of employers and workers, which is then commonly referred to as Pancasila industrial relations. Pancasila industrial relations in the legal aspect is actually part of the development of law with theoretical and practical dimensions.[26]

Pancasila Industrial Relations (HIP)[27] is a system of relations formed between actors in the process of producing goods and services (workers, entrepreneurs, and government) which are based on values which are a manifestation of the overall principles of Pancasila and the 1945 Constitution which grow and develop based on the national personality and national culture of Indonesia. The importance of Pancasila industrial relations in the relationship between employers and employees actually focuses on harmonious relationships based on the character and culture of Indonesian society, with deliberation as the basis for resolving labor disputes.[28]

Based on the above elaboration of HIP, three principles of cooperation in work relationships can be obtained, namely:

1. Production collaboration
   It suggests that workers, or laborers, and entrepreneurs are comrades in the manufacturing process, which means that both workers and entrepreneurs are obligated to collaborate and help the business run smoothly.
2. Collaboration in appreciating the company's results
   It means that workers and entrepreneurs are comrades in equitably enjoying the company's results, which means that the company's

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[25] Muhammad Saud et al., "The Social Media and Digitalization of Political Participation in Youths: An Indonesian Perspective," *Society* 8, no. 1 (2020): 83–93.

[26] B Woeryono, "Study of Omnibus Law on the Legal Politics of the Indonesian Government in Using Foreign Workers," *Open J. Legal Stud.* 3 (2020): 143, https://doi.org/https://doi.org/10.32591/coas.ojls.0302.06143w.

[27] Anjar Kususiyanah, "Hubungan Industrial Pancasila Dalam Undang-Undang Cipta Kerja," *Invest Journal of Sharia & Economic Law* 1, no. 2 (2021): 42–59, https://doi.org/10.21154/invest.v1i2.3478.

[28] Agus, "Eksistensi Hubungan Industrial Pancasila Pasca Disahkannya Peraturan Pemerintah Pengganti Undang-Undang Cipta Kerja."

business results are shared fairly and in accordance with work performance.

3. Responsible collaboration
   Workers and entrepreneurs are comrades in their responsibilities to God, the nation and state, the surrounding community, workers and their families, and the companies where they work.

In Pancasila Industrial Relations, every dispute between workers and employers must be resolved amicably through deliberation. As a result, the use of coercion and unilateral actions such as work strikes, lockouts, etc. violates the principles of Pancasila Industrial Relations.[29]Based on the above description, in resolving industrial relations disputes, HIP paradigm contains elements, including:

a. Deliberation is a tool for establishing and maintaining harmonious working relationships between employers and employees.
b. Non-litigation resolution is a priority that must be prioritized.
c. Protecting the parties' private lives.
d. It is simple, quick, and inexpensive.
e. Maintaining characteristics of legal clarity. In this case, legal certainty includes not only rule certainty but also action certainty based on orders of laws and regulations in the field of industrial relations dispute settlement.
f. Prioritizing employees' rights because they are subordinate to bosses.
g. Law enforcement officials who are competent in their field and professional in the performance of their primary tasks and activities.
h. Strict legal penalties for law enforcement, particularly officials within the work environment

These elements are the depiction of HIP values which must be reflected in industrial relations dispute settlement arrangements. Disputes or conflicts, according to Ronny Hanintijo[30] are situations (circumstances) in which two or more parties are battling for their respective aims, and each party persuades the other party of the veracity

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[29] Ahmad Hunaeni Zulkarnaen, "Masalah Rawan Dalam Hubungan Industrial Dan Konsep Negara Kesejahteraan Indonesia," *Jurnal Hukum Mimbar Justitia* 2, no. 2 (June 7, 2018): 806, https://doi.org/10.35194/jhmj.v2i2.32.

[30] Ronny Hanito, "Hukum Dan Masalah Penyelesaian Konflik," *Majalah Fakutas Hukum UNDIP, Semarang*, 1984.

of their respective goals. Joni Emirzon[31] defines dispute as a conflict or discrepancy between the parties who will and are in a relationship or collaboration. In other words, conflict can be interpreted as a condition when a party expects the other party to act or not act as desired, but the other party rejects. Thus, the elements of the conflict can be drawn as follows:

a. The presence of parties (two or more people)
b. Different objectives, that is, one party wishes for the other party to act/behave in accordance with his desires.
c. The other party rejects the wish, or the request cannot be reconciled

There are several forms of dispute, as described in the Black Law Dictionary[32] namely Conflicting Evidence, Conflict of authority, Conflict of interest, Conflict of Law, and Conflict of Personal Law. From the conflicts that arise, it will show whether they are conflicts of interest, legal, social, in the business field etc.

According to the PPHI Act, labor conflicts are called Industrial Relations Disputes. Industrial Relations Disputes according to Act No. 2 of 2004 article 1 are defined as:

> *"Differences of opinion leading to conflicts between employers or groups of employers and workers/labors or trade/labor unions or workers/labor unions due to disputes of rights, disputes of interests, disputes of the employment termination, and disputes between trade unions/labor unions within one company.*

The following are types of disputes based on Article 1 of Act no. 2 of 2004, namely:

1. Conflict of Rights
   The dispute arises due to non-fulfillment of rights, differences in implementation or interpretation of statutory provisions, work agreements, company regulations or collective bargaining agreements.
2. Conflict of Interest

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[31] Joni Emirzon, *Alternatif Penyelesaian Sengketa Di Luar Pengadilan,* 2022.

[32] Henry Cambell Black, "Black's Law Dictionary Fifht Edition" (West Publishing Company, St Paul Minn, 1979). P.271

Disputes arise in work relations due to disconformity of opinion regarding the making, and/or changes to work conditions stipulated in work agreements, or company regulations, or collective bargaining agreements.

3. Conflict of Termination
   Disputes arise in work relations due to difference of opinion on the termination of the employment carried out by one of the parties.
4. Conflict between Trade Unions or Labor Unions
   Disputes between trade unions/labor unions and other trade unions/labor unions within the same company due to disconformity of ideas on membership, exercise of rights and obligations of work unions

According to Muhammad Saleh and Lilik Mulyadi, from the old order to the reform order, the legal policy of industrial relations dispute resolution has not been able to create a legal product that can create justice and legal certainty for the parties, especially the workers/labors.[33] The Labor Relations Court, as provided for in Article 1, item 17 of the Law No. 2 of 2004 on Labor Relations Disputes Settlement, is a special court established within the District Court with the authority to examine, hear and decide on labor relations disputes. The provision in Article 57 of Law No. 2 of 2004 on Industrial Relations Disputes Resolution is that "The procedural law applicable to the Industrial Relations Court shall be the civil procedural law applicable to courts within the general judicial environment, except for those specifically regulated in this Law". It can be concluded that Law No. 2 of 2004 on Industrial Relations Dispute Resolution is special or lex specialis. The civil procedural law is excluded if it is in conflict with the procedural law established by the law.[34]

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[33] Nuryansyah Irawan, "Studi Yuridis Normatif Implementasi Regulasi Perselisihan Hubungan Industrial," *Jurnal Ketenagakerjaan* 18, no. 1 (2022): 47–63, https://doi.org/10.47198/jnaker.v18i1.147.

[34] Pratiwi Dewi Rismayanti Pratiwi, "Analisis Hukum Penerapan Asas Contante Justitie Dalam Penyelesaian Perkara Hubungan Industrial" (Universitas Balikpapan, 2019).

2. Inconsistencies in Industrial Relations Dispute Settlement Regulations against the Pancasila Industrial Relations Paradigm

The following are several legal problems in the PPHI Act viewed from the perspective of HIP values:

1) Concept of Terms

The use of incorrect and inaccurate terminology, as stated in the General Provisions of the PPHI Act, indicates that the settlement of industrial relations disputes can never be carried out properly. The formulation of the term or concept of industrial relations dispute is incorrect. According to Article 1, paragraph (1), industrial relations disputes are:

> "*Disagreements result in conflicts between employers or groups of employers and workers or laborers or trade unions or labor unions due to conflicts of rights and interests, termination of employment, and disputes between trade unions or labor unions within one company*".

Can conflict between trade unions or labor unions cause industrial relations disputes between employers and workers? The disputing parties in the formulation of Article 1 paragraph (1) above are confusing. Due to the fact that only employers/laborers and workers/labor unions or trade/labor unions are parties involved in industrial relations disputes. On the other hand, disputes between trade unions and labor unions, the parties of which are both trade unions and labor unions, are categorized as one of the disputes that cause industrial relations disputes.

2) Authority Limitation of the Dispute Settlement Institution

The authority of conciliators and arbitrators is limited. In the PPHI Act, mediators and industrial relations court judges are given the authority to resolve disputes of rights, termination, interest, and disputes between workers' unions. Meanwhile, the conciliator is only given the authority to settle termination disputes, disputes of interests, and conflicts between unions. Meanwhile, arbitrators are only authorized to resolve disputes over interests and disputes between unions. Is the arbitrator considered incapable of resolving rights and termination disputes? It is certainly wrong because this provision limits the rights of workers and employers to resolve

conflicts of rights and termination to an arbiter who they believe can resolve industrial relations disputes quickly and fairly.

3) Bureaucratic

The PPHI Act adds a record of industrial relations disputes (Article 4) to the mechanism for resolving industrial relations. If the parties are unable to reach an agreement bilaterally, they must first file the issue with the office responsible for manpower affairs before proceeding to mediation, conciliation, or arbitration. In the age of globalization, government policy should be aimed at de-bureaucratization or deregulation rather than establishing additional tables.

Conciliation and mediation are not positioned as alternatives to dispute resolution (ADR). In this PPHI Act, conciliation and mediation are placed as " intermediary mechanism" that must be taken by the disputing parties before they take the Industrial Relations Court route through the claim mechanism (Article 5), and the Industrial Relations Court is obliged to return the claim to the plaintiff if the lawsuit filed is not accompanied by a settlement through mediation or conciliation (Article 83 paragraph 1). This provision extends the process and indicates that there has been no significant change compared to the old laws and regulations.

4) Conflict of Norms

Article 87 of the PPHI Act is an example of a potential article that could cause a conflict of laws. The article states that trade unions/ labor unions, and employers' organizations can act as attorneys for proceedings at the Industrial Relations Court to represent their members. From the workers' side, the application of this article has the potential to cause conflicts with lawyers, considering that normatively, based on the Advocate Law, namely Act No. 18 of 2003, only lawyers can proceed in court.

5) Nature of the Trial

It is stated in Article 95 (1) of the PPHI Act that the panel of judges' sessions are open to the public, unless they determine otherwise. An open trial in the Industrial Relations Court is not appropriate. Due to the fact that labor cases are different from criminal or civil cases, which are tried openly, employers and laborers will be more open if the trial of labor cases is held behind

closed doors, unless the parties want it. In other words, it is not the judge's will.

6) Bipartite

Bipartite negotiations resolve industrial disputes between workers or labor unions and employers. Article 3, paragraph 1 mandates the first use of bipartite in dispute resolution, but there are no sanctions for parties unwilling to comply.[35] Article 3, paragraph (2) of Permenakertrans RI No. PER.31/MEN/XII/2008 states that in cases where a party declines an invitation to negotiate and the request for negotiations is given in writing twice consecutively, and the other party refuses or fails to respond to negotiations, the dispute may be registered with the agency responsible for the local labor sector by attaching evidence of the requests for negotiations. Bipartite initiatives are frequently inadequately executed due to employers' reluctance to respond to the bipartite invitation.[36]

7) Mediation

a. Overlapping Terms

In the PPHI Act, 'mediation' (article 1 paragraph 11) and 'conciliation' (article 1 paragraph 13) are defined similarly, even though the regulated scope is different. Article 1 paragraph 11 defines mediation as:

> *Industrial Relations Mediation, frequently referred to as mediation, is the process of resolving rights conflicts, interest disputes, job termination disputes, and disputes between workers/labor unions within an organization through discourse mediated by one or more neutral mediators.*

While conciliation, based on article 1 paragraph 13 is:

> *Industrial Relations Conciliation, hereinafter referred to as conciliation, is the resolution of interest disputes, employment termination disputes or disputes between workers/labor unions*

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[35] Helwan Kasra, "Kritik Terhadap Sistem Penyelesaian Perselisihan Hubungan Industrial Di Indonesia: Studi UU No 2 Tahun 2004 Tentang Penyelesaian Perselisihan Hubungan Industrial Perspektif Teori Sistem Hukum," *Sol Justicia* 5, no. 1 (2022): 97–112, https://doi.org/https://doi.org/10.54816/sj.v5i1.484.

[36] Pristika Handayani, "Kelemahan Peraturan Mediasi Dalam Penyelesaian Perselisihan Hubungan Industrial," *PETITA* 3, no. 2 (2021): 259–71, https://doi.org/https://doi.org/10.33373/pta.v3i2.3831.

> *within one company through deliberation mediated by one or more neutral conciliators.*

The similarity of meaning between mediation and conciliation becomes clearer if we examine Article 13 paragraph 2 letter b and Article 23 paragraph 2 letter a. Article 13, paragraph 2, letter b, states that when an agreement cannot be reached to resolve an industrial relations dispute through mediation, the mediator will issue written recommendations. Meanwhile, Article 23, paragraph 2, letter a, states that if an agreement is not obtained to resolve industrial relations through conciliation, the conciliator issues written recommendations. These two Articles above indicate that the mechanism and output produced by the two settlement institutions are similar, namely written recommendations as regulated in Article 13 paragraph 2 letter b for mediation and Article 23 paragraph 1 letter a for conciliation.

Mediation is actually different from conciliation. If the mediator's suggestions are fundamentally the wishes of the disputing parties, the draft dispute solution in conciliation is merely an outcome of the conciliator's formulation based on facts acquired from the parties and then stated in the form of a decision. The definition of this type of conciliation refers to Oppenheim's opinion[37]:

> *Conciliation is the process of settling a dispute by submitting it to a commission of persons charged with clarifying facts and (usually after hearing the parties and trying to get them to reach an agreement) making proposals for a settlement, but such a decision is not binding".*

The similarity of meaning between mediation institutions and conciliation in the PPHI Act normatively creates legal uncertainty and overlapping circumstances of provisions in the form of clauses and does not reflect the normative principle of a regulation of legislation concerning the basis of formula clarity.

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[37] Huala Adolf, "Chandrawulan, Masalah Masalah Hukum Dalam Perdagangan Internasional" (Raja Grafindo Persada, Jakarta, 1994). P.67

b. Form of Government Intervention

The PPHI Act states that Industrial Relations Mediation is the resolution of rights disputes, interest disputes, employment termination disputes, and disputes between workers/labor unions within one company through deliberation mediated by one or more neutral mediators (Article 1 number 11). Meanwhile, an Industrial Relations Mediator is an employee of a government agency responsible for the field of employment who fulfills the requirements as a mediator determined by the Minister to carry out mediation and has the obligation to provide written recommendation to the disputing parties to resolve conflict of rights, interests, and employment termination, and disputes between trade unions/labor unions within one company (Article 1 point 12). The mediator possesses authority as the basis for carrying out his duties. According to the definition above, mediators are carried out by neutral third parties, namely employees at agencies responsible for the field of employment. This kind of understanding bears contradictions. The role of mediator should be anyone desired by the parties who have the expertise and ability to do so, including the possibility of being selected by employees in agencies responsible for the field of employment. Industrial relations mediation shall facilitate the disputing parties in the form of an agreement to determine and appoint a mediator. In fact, neither the mediator nor the conciliator is the monopoly of the government or the private sector. Both of them can carry out the same function considering that the basic approach that should be used is competence. Mediator[38] is a neutral third person who helps disputing parties reach agreement through the mediation process. This understanding does not limit the personal mediator who can resolve disputes. Principally, whoever the parties want. Based on the Black Law Dictionary, mediation is "A method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution."

[38] Black, "Black's Law Dictionary Fifht Edition."

Therefore, it can be concluded that mediation is part of negotiation between disputing parties with the help of a neutral third party.[39]

c. Mediation is not an option

The provision of Article 4 paragraph 4 mentions that if the parties do not determine the option of settlement through conciliation or arbitration within 7 (seven) working days, the agency responsible for the employment sector delegates dispute resolution to a mediator. The immediate delegation may be questioned since it does not first offer mediation to disputing parties as an option. This question has weak rationalization. The explanation section of this article only states things clearly enough.

However, in this case, it seems that the government wants to get involved in resolving industrial relations disputes as a mandatory intermediary as regulated in Act No. 22 of 1957. Therefore, if a lot of cases are stacked on the mediator, there may be only a few cases that can be settled by conciliation or arbitration. The provisions in Article 4, paragraph 4, actually place industrial relations mediation as an option that represents the agreement of each disputing party to choose an institution expected to resolve the dispute. The appearance of an industrial relations mediator as a third party with the authority to resolve industrial relations disputes is not based on the choice or selection of the disputing parties.

In this case, the disputing parties are not given the right or authority to select or choose the mediator they want because reliability, objectivity, impartiality, ability, level of knowledge, honesty, loyalty, etc. are used as a basis for choosing the mediator. Industrial relations mediation should be voluntary.[40] It is not mandatory in the process of resolving cases or disputes. Industrial relations mediation is no longer positioned as an alternative dispute

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[39] F Fuqoha, "Tinjauan Yuridis Kekuatan Hukum Penyelesian Perselisihan Non-Litigasi Dalam Perselisihan Hubungan Industrial," *Indonesian State Law Review (ISLRev)* 2, no. 2 (2020): 119–37.

[40] Examine the principles of mediation and some provisions on mediation contained in Article 1 point 1 of Act No. 30 of 1999 on Arbitration and Dispute Resolution and some expert opinions in the Literature Review section. "Act No. 30 of 1999 Arbitration and Alternative Dispute Resolution" (1999).

resolution (ADR), but rather as an "intermediary mechanism" that must be taken by the disputing parties before they take the route of the Industrial Relations Court through filing a lawsuit by one of the parties (article 4 paragraph 4), and the Industrial Relations Court is obliged to return the lawsuit to the plaintiff if the lawsuit is not accompanied by a resolution through mediation (article 83 paragraph 1). The inconsistency of industrial relations mediation with the principles of mediation as found in the PPHI Act does not actually reflect the background to the ideals of the issuance of the PPHI Act itself.

8) The Exaggerate Authority of Mediator

Based on Article 12 Paragraph 1 of the PPHI Act, anyone asked for information by a mediator to resolve an industrial relations dispute is obliged to provide the information required, including books and necessary documents. The normative provisions in this article exceed the portion of the mediator's authority because, essentially, there should not be a coercion element between the parties, including between the mediator and the parties in a mediation process. The parties voluntarily request a mediator to help resolve the dispute that occurs. Therefore, the mediator's position is to facilitate the parties reaching an agreement that can only be decided by the disputing parties.

As an external party to the disputing parties, the mediator does not have the authority to coerce. He is obliged to meet or bring together the disputing parties. Thus, the provisions in Article 12 paragraph 1, which emphasize the obligation for people in the interests of a mediator to provide various information in resolving industrial relations disputes, actually exceed the essential portion of the mediation resolution institution. If the industrial relations mediator only functions as a helper, it means that this position does not have the authority to govern; otherwise, the mediator will violate the principles of industrial relations mediation in carrying out the duties. A clear principle of industrial relations mediation concerning the mediator's authority is found in the definition proposed by Gary Goodpaster, Christopher W. More, Kimberlee K. Kovac, and Mark E. Roszkowski included in Balck's Law Dictionary of statutory regulations, namely Act No. 39 of 1999 and Supreme Court Regulation No. 1 of 2016. Based on the

formulation from various sources, it is emphasized that the role of the mediator is to help the parties rather than to oblige or to give an order. The only obligation of a mediator is to make written recommendations.

In many countries, mediation is considered the most proper way to resolve disputes between employers and workers. It happens since conflicts of work relations may occur anytime, and the settlement through litigation is pricey.[41] Mediation is a good system; however, it has obstacles, since today the orientation of dispute settlement is litigation, because this process is considered to be the only thing assuring legal certainty. Therefore, only certain countries really implement mediation as well as possible. Japan has successfully implemented mediation. This was conveyed by Prof. Yoshiro Kusano in a public lecture on September 28, 2019 at Airlangga University. He is a former judge in Japan who is very experienced in mediation. According to him, the success rate of mediation in Japan reaches 75% or even more. The idea of dispute resolution in Japan was successful because it departed from noble traditional values such as *arasoi o mizu ni nagasu* (let the problem flow like water), *kenkai ryoo-seibai* (the parties are punished fairly), and *arasoi maruku osameru* (resolving the problem in a circle).

esides, for the Japanese, bringing a problem to court is a despicable act that must be avoided. Mediation, or *Jidan*, is considered the wisest way to go. However, *Jidan* is a settlement forum that does not have formal sanctions and is only voluntary. It has a slight difference from *chotei*. *Chotei* refers to a mediating institution in the form of a panel, which consists of three people (two are elected by the parties to the dispute and one is a judge).

China also has a high success rate in resolving industrial relations disputes through mediation. However, in contrast to Japan, this country is more stringent in its settlement. There are three keys to successful mediation in China. First, there is a strong state presence in mediation, not only the government is the designer of the mediation system but the promoters involved are also government agents. Second, unlike European countries which

[41] Martin C Euwema et al., *Mediation in Collective Labor Conflicts* (Springer Nature, 2019).

place mediation as an alternative to litigation, China places mediation as a procedure that must be passed first before it can be directed to arbitration or court. Third, Mediation in China is directed to reduce conflict, not to seek for justice. Unfortunately, workers are often forced to accept compensation less than the value that the court decides, and it becomes the weakness of the mediation concept.[42]

9) Limitation of Arbitration Function

In the conciliation and arbitration process, the procedural law leads to a very formal settlement of disputes. It deviates from the principles in Alternative Dispute Resolution (ADR) which emphasize the informal aspect, because mediation, conciliation and arbitration are basically an extension (*verlengste*) of the negotiation process.[43]

Therefore, a series of agreements in the ADR process is essential to obtaining a truly fair decision because they are accepted voluntarily by both parties to the dispute. It is reflected in the provisions of Article 43 (2), which give the arbitrator the authority to hear by *verstek* (without the presence of either party). Then the mediator in Article 11 (1), the conciliator in Article 21 (1), the arbitrator in Article 46 (1), and the PHI judge in Article 90 (1) are given the authority to summon witnesses. The institutional arrangements and mechanisms for resolving industrial relations disputes in the PPHI Act are still unable to guarantee a quick resolution of industrial relations disputes. It is depicted by various articles in the PPHI Act, which do not encourage a fast settlement of industrial relations disputes.

The formulation of arbitration in Article 1 paragraph (15) has degraded the arbitrator's authority in resolving industrial relations disputes. According to Article 1, paragraph 15, arbitration is not authorized to handle rights disputes and termination issues. This provision closes the possibility for employers, workers, or labor unions to use the services of arbitrators in resolving disputes

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[42] Wenjia Zhuang and Feng Chen, '"Mediate First": The Revival of Mediation in Labour Dispute Resolution in China', *The China Quarterly*, 222 (2015), 380–402.

[43] Rachmadi Usman, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan* (Citra Aditya Bakti, 2003). P.15

over rights and employment termination; thus, the effort to accelerate industrial relations dispute settlement is hampered by Article 1 paragraph (15) in conjunction with Article 29 of the PPHI Act itself.

10) Competence of Ad Hoc Judges

According to Article 55 of Act No. 2 of 2004, the Industrial Relations Court is a special court inside the normal court environment. As a result, the recruiting process for ad hoc judges is governed by Government Regulation No. 41 of 2004. According to the documents, various issues arise in this procedure, including the fact that ad hoc judges at the district court level are not obliged to be judge candidates with a Bachelor of Laws background. According to RI Supreme Court sources, educated prosecutors hold the titles of engineer, A.Ag., Drs., and others. Rationally, this would have a lot to do with the formal process of the trial itself. A true judge must comprehend the fundamentals of legal philosophy. From a sociological standpoint, fundamental and material legal concerns are only encountered by people who have studied at the law faculty for around five years. However, these ad hoc candidates are excellent; they only require three weeks of instruction to become judges, whereas state court judges must complete a six-month special education program reserved for law graduates.

Another potential problem arising from the existence of PHI Ad-Hoc judges is that they can be dismissed at the request of the trade union organization that proposed them (Article 67, paragraph 1, letter f) of Act No. 2 of 2004. It is irrational since it is similar to the term recall, which is only known in the world of political parties. If the ad hoc judge is proposed to be dismissed, can it be replaced by a candidate ad hoc judge also proposed by the workers' organization? If it happens, our world of justice will become even worse with the presence of this PHI court. In other words, it is easy for someone to become a judge. Thus, it will certainly imply a low quality of judgment and affect the lower level of public trust in the world of justice, which is now characterized by the birth of a number of ad hoc courts.

The issue of recruiting Ad-Hoc judges, which generates many complications as outlined above, will certainly have an impact on the PHI court's future procedure and conclusions. There

will be several possibilities occurring in the process of judgment, namely; low level of understanding of the basics, particularly legal principles and the formal legal process of Ad-Hoc Judge Candidates that will greatly enable legal problems to arise, especially in the context of a quick and cheap justice system. Ad-hoc Judges who are not legal graduates may struggle to conduct material analysis because making a decision involves not only considering the pros and cons of the litigation, but also using a legal sociological approach to each decision.

If the case is filed by an employee of one of the companies where an Ad-Hoc judge has previously worked as a "*manager*" or employee, this may become another issue that probably arises. In this circumstance, a relatively objective choice may be made. Another problem that will emerge is that the absence of an officer in the PHI court will affect the execution process. In addition, this Ad-Hoc court decision will not be able to provide protection and legal certainty for workers because the execution process will be full of judicial mafias with "*haram*" bargaining. It is highly possible for this to happen because, when the worker or labor organization wins the lawsuit, the entrepreneur will be able to face the decision with the strength of his capital.

11) Penalty

There are no provisions governing legal sanctions for mediators who violate article 10 which states: "*Within 7 (seven) working days after receiving the delegation of dispute resolution, the mediator must have conducted research on the situation of the case and immediately held a mediation hearing*."

Then, there are no provisions governing who must register the Joint Agreement with the Industrial Relations Court (article 13 paragraph 1 in conjunction with article 13 paragraph 2e). If an agreement cannot be achieved through mediation, the mediator must give written recommendations within ten working days after the first mediation session (article 13 paragraph 2b). The mediator who regulates article 13 paragraph 2b is also not threatened with legal sanctions.

According to Article 15, the mediator must complete his duties no later than 30 working days after receiving the delegation of dispute resolution. Administrative sanctions in the form of

disciplinary punishment for civil officials are weak; thus, the threat of punishment must be increased. There are no procedures that handle legal difficulties if the entrepreneur opposes the decision of the mediator or conciliator while also failing to file a lawsuit with the Industrial Relations Court. This problem will persist if it is not resolved, and the right to go on strike cannot be exercised because it is regarded as an illegal strike. Settlement of industrial relations problems through expedited processes, as outlined in articles 98 and 99, cannot guarantee that the case will be concluded within 21 days. It is because the commitment is not backed up with severe penalties for violators. There is no guarantee of the time limits for resolving industrial relations disputes at the Industrial Relations Court level, as reflected in articles 103 to 109, given that there is no threat of punitive sanctions for court officials who violate the time limitation provisions for the litigation process.

It also appears that the Supreme Court's 30-day time restriction for litigation (article 115) cannot be guaranteed, given that the 30-day time limit is only for priority cases. The question is: Is there the political will of the government to place labor cases as a priority? Is there a legal sanction for the Supreme Court to fail to settle labor cases at the rate of cassation exceeding 30 days?

The attempt to accelerate the process of settlement of industrial relations disputes through time limits settlement is regulated in a discriminatory manner in the PPHI Act. The threat of punishment sanctions is directed only to conciliators and arbitrators, while mediators and judges of the Industrial Relations Court are barely threatened with legal sanctions if violating the time limit settlement industrial relations dispute.

Fairness is relative; therefore, a fair judgment is one that is reached willingly by the parties to a dispute rather than through force, such as seizure or auction. As a result, a process for resolving industrial conflicts that may produce a conclusion acceptable to both parties should be devised. The PPHI Act is still founded on the conflict paradigm (winning matters, not solving matters). It is mirrored in the conflict-paradigmatic provisions deconstructed above.

12) Process Duration

The resolution of employment termination disputes usually comprises three stages: Bipartite (30 working days), Mediation (30 working days), and the Industrial Relations Court at the district court level (50 working days). Parties involved often request for cassation, in accordance with Article 115 of Act No. 2/2004 on the Settlement of Industrial Relations Disputes. However, cases at the appeals level can take 1.5 to 2 years, from the time of the appeal application process until the Industrial Relations Court issues its decision.[44] According to Hotman Paris Hutapea, settlement time for cases involving severance pay can take up to two years if not regulated by a separate law. The process can be lengthy for workers earning a monthly salary of only five million rupiah, as cassation to judicial review can take up to two years.[45]

The high cost of litigation, particularly dispute resolution, can divert the resources, time and attention of litigants. The prolonged dispute resolution process, involving legal fees and attorney charges, can also result in extended resolutions. This condition is particularly challenging in industrial relations disputes, which generally mandate an expeditious, affordable, and informal approach despite their formal and technical nature.[46]

Article 103 of Act Number 2 of 2004 concerning Industrial Relations Dispute Resolution reads:

> *"The Panel of Judges shall issue a decision on the settlement of industrial relations disputes within 50 (fifty) working days as of the first hearing."*

However, technically this is not the case. According to the legal findings of the research conducted at PHI Semarang in 2019, there were a total of 87 (eighty-seven) cases. Amongst them, 74

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[44] A. D. K. Sari, "Hotman Paris Sebut Urus Pesangon Buruh Makan Waktu Lama, Apa Solusinya?," Kabar 24, 2020.

[45] Irawan, "Studi Yuridis Normatif Implementasi Regulasi Perselisihan Hubungan Industrial."

[46] Sherly Ayuna Putri Sherly, Agus Mulya Karsona, and Revi Inayatillah, "Pembaharuan Penyelesaian Perselisihan Ketenagakerjaan Di Pengadilan Hubungan Industrial Berdasarkan Asas Sederhana, Cepat Dan Biaya Murah Sebagai Upaya Perwujudan Kepastian Hukum," *Jurnal Bina Mulia Hukum* 5, no. 2 (2021): 310–27, https://doi.org/https://doi.org/10.23920/jbmh.v5i2.307.

(seventy-four) cases exceeded the 50 (fifty) day mark, while 2 (two) cases fell within that range. Furthermore, 11 (eleven) cases were revoked. In the year 2020, from the months of January to April, there were no cases that underwent final decision.[47]

An Appropriate Arrangements Concept for Industrial Relations Disputes Settlement in the Perspective of Pancasila Industrial Relations Paradigm

According to Purbacara and Soerjono Soekanto, a legal rule must be formed based on three foundations to maximize its functions, namely Philosophical, Juridical and Sociological bases. Factually, a legal rule will only be a dead rule (*dode regel*) if it only has a juridical component, a coercive rule (*dwang regel*) if it only has a sociological foundation in the sense of power, and an ideal law (ideal norm) if it only has a philosophical component.[48] In other words, a legal rule must be there not only to serve as a foundation for legality but also to be created at a paradigmatic level and have a real application.

Meanwhile, as the industrialization age progresses, the number and complexity of industrial relations dispute problems grow, necessitating the development of institutions and procedures for resolving industrial relations disputes that are fast, precise, just, inexpensive, harmonic, dynamic, and fair. This type of conflict settlement arose from the idea of establishing social justice in the treatment of industrial relations problems involving two disputing parties, namely employers and workers. Both are in an unequal position; entrepreneurs have a higher socioeconomic status than workers or laborers, who rely on the entrepreneur or employer for a living.

Both are human beings with human dignity. Workers' or laborers' weak situation should not be an impediment to obtaining justice at the

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47 Mahdian Astira Mawarni, Siti Kunarti, and Kadar Pamuji, "Implemenatasi Pasal 103 Undang-Undang Nomor 2 Tahun 2004 Tentang Penyelesaian Perselisihan Hubungan Industrial Di Pengadilan Hubungan Industrial Semarang," 2020.

48 Soerjono Soekanto and Purnadi Purbacaraka, "Perihal Kaidah Hukum," *Bandung: Citra Aditya Bakti*, 1993.

Industrial Relations Court. The public expects the Industrial Relations Court to uphold legal authority, legal certainty, and justice.[49]

According to Gustav Radburg, there are three fundamental legal values: legal certainty, expediency, and justice. Society requires not only norms that ensure legal certainty in their interactions with one another, but also justice; additionally, the law is necessary to serve its interests (give benefits).[50] Similarly, the PPHI Act's procedural law for resolving industrial relation disputes must include these three fundamental values.

By this fact, the court is thought to fail to accommodate legal certainty and justice as absolute requirements in a country based on law. Responding to these conditions, M. Muhammad Saleh and Lilik Mulyadi revealed that for more than five decades, since the Old Order, the New Order, and the Reformation Order, the legal politics of industrial relations dispute settlement have not been able to produce a statutory product that can provide legal certainty for workers or laborers. Legal certainty is inseparable feature of law, especially for written legal norms. Fence M. Wantu states that, without the value of legal certainty, the law is meaningless because it can no longer be used as a code of conduct for everyone.[51] Based on the welfare law, employment relations are understood through the presence of the state to create workers' welfare. Labor welfare can be achieved through the establishment of laws and regulations that have legal certainty, justice, and expediency. [52]

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[49] Christina N M Tobing, "Menggagas Pengadilan Hubungan Industrial Dalam Bingkai Ius Constituendum Sebagai Upaya Perwujudan Kepastian Hukum Dan Keadilan/Initiating an Industrial Relations Court in the Framework of Ius Constituendum as an Effort to Realize Legal Certainty and Justi," *Jurnal Hukum Dan Peradilan* 7, no. 2 (2018): 297–326, https://doi.org/http://dx.doi.org/10.25216/jhp.7.2.2018.297-326.

[50] Teguh Prasetyo and Abdul Halim Barkatullah, "Filsafat, Teori Dan Ilmu Hukum, Pemikiran Menuju Masyarakat Yang Berkeadilan Dan Bermartabat, Jakarta: PT," *RajaGrafindo Persada*, 2014. P.15-16

[51] Aries Harianto, "Does Religious Holiday Allowance Policy during Covid-19 Provide Legal Certainty?," *Journal Sriwijaya Law Review* 5 (2021), P.91, https://doi.org/http://dx.doi.org/10.28946/slrev.Vol5.Iss1.673.pp86-100.

[52] Aries Harianto, "Reformulation of Contractus Sui Generis Wage Arrangement of Work Agreement After Covid-19 Pandemic," *Brawijaya Law Journal* 10, no. 1 (2023), P.14, https://doi.org/https://doi.org/10.21776/ub.blj.2023.010.01.01.

The preceding legal analyses reveal that the legal means in the form of the PPHI Act have several flaws and should be amended. As long as no reforms are made, the Industrial Relations Court and its judges must have the fortitude to be more than simple mouthpieces for legislation but also for feelings of fairness and the expectations of the working and business communities where they are located. If this is adopted, perhaps a more harmonious and just labor relationship will arise in this country.[53]

Thus, based on the study and analysis of the PPHI Act, it is critical to change or at the very least evaluate the requirements contained in the PPHI Act's articles. This normative revision or review is undoubtedly carried out through the lens of the HIP paradigm. Several significant and fundamental elements must be amended in order to strengthen the provisions of the PPHI Act and create a PPHI Act that is in conformity with the HIP paradigm, including:

1) The construction of the definition of Industrial Relations Disputes is expected to be consistent with the disputing parties. The formulation, which states that one sort of industrial relations disagreement is a dispute between labor unions, must be altered because it contradicts the parties in dispute, in the sense that the contesting parties in industrial relations conflicts are only employers or a combination of employers and workers or labor unions, not between labor unions.
2) Removal of restrictions on the authority of non-litigation industrial relations dispute institutions. Both Mediation, Conciliation and Arbitration have the same function to resolve all types of industrial relations disputes so that parties have equal access to optimize industrial relations dispute resolution institutions.
3) Harmonization of norms to avoid conflict of rules on Legal Standing. The norm is the PPHI Act and the Act No. 18 of 2003 concerning Advocates.
4) The nature of the trial is not open to the public because the work connection is a unique partnership. A closed hearing will offer the parties in dispute with a confidential setting which is open to each other without being accessible to third parties.

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[53] Surya Tjandra and Marina Pangaribuan, *Kompilasi Putusan Pengadilan Hubungan Industrial Terseleksi 2006-2007* (TURC, 2007). P.xiii

5) Improving the formulation of the meaning between mediation and conciliation because the two non-litigation dispute resolution institutions are substantively different.
6) Restoring the nature of non-litigation by reducing government intervention. Industrial relations mediation as regulated in the PPHI Act is a form of government intervention because the mediator is strictly defined as a representative of officials within the Manpower Offices. Any type of non-litigation settlement must be positioned as an option or choice for the disputing parties.
7) A law degree is required for competence as a mediator in settling industrial relations disputes since the substance of an industrial relations dispute is basically a legal dispute.
8) In order to build a sense of responsibility for mediators, the revision of the PPHI Act is expected to regulate and apply strict sanctions. The mediator's poor sense of responsibility may create uncertainty in the process and can be detrimental to workers.

Conclusion

The arrangement of industrial relations dispute settlement as stipulated in the PPHI Act does not reflect the Pancasila Industrial Relations (HIP) paradigm. It indicates that the legal ideals of Pancasila are merely a dream. Several facts on this matter include ambiguity in terminology that is not precise, especially the terms of industrial relations disputes and industrial relations mediation, conflicting norms on legal standing, limiting the authority of non-litigation settlement institutions, dominance of government intervention in non-litigation settlements, professional competence mediator and sanctions that do not build the mediator's sense of responsibility. Thus, the paradigm applied in the PPHI Act is the Conflict Paradigm. It certainly conflicts with the Pancasila Legal Ideals which contains the values of Pancasila Industrial Relations Paradigm. It is significant to conduct the reformulation of the PPHI Act. The intended reformulation is not only the form of revisions but also an effort to adapt to the need to answer various developments in work relations issues as well as to form new laws and regulations concerning industrial relations dispute settlement. The essence of these improvements shall accommodate the values of

Pancasila Industrial Relations. Essentially, it shall involve both aspects of certainty and justice, and commit to remaining open to investment. Settlement of industrial relations disputes is a concrete problem concerning the livelihood of many people, namely workers and their families. The idea of revising or creating a new PPHI Act must be on the national legislative program agenda. The law makers must open the access to the aspirations of workers for improvement. Settlement of industrial relations disputes is not limited to issues of norms and improving regulations. It further requires consistent implementation from the parties, especially entrepreneurs, officials within the Manpower Office, including Labor Inspectors. Based on the above findings, it is fundamental and significant to apply the Partnership Paradigm which is authentically affiliated with the Pancasila Legal Ideals. This paradigm is a guideline that places the parties in industrial relations as partners by upholding the acceleration of the process and the concept of win-win solutions.

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