THE GOVERNMENT AS THE INTERMEDIATE IN THE SETTLEMENT OF LABOR DISPUTES IN INDONESIA

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ABSTRACT

Purpose: Therefore, it is essential to know the impact of peace settlement efforts which must be carried out outside the court as a formal condition for filing a lawsuit to the Industrial Relations Court.

Theoretical framework: When there is a dispute between workers and employers, government intervention and authority is needed. So that at this stage, labour law is related to public law, both in the aspects of state administrative law, state administrative law and criminal law. As a third part, the government helps resolve labour disputes through bipartite, mediation, conciliation and arbitration. These pre-litigation steps are considered to slow down the settlement process in employment.

Method/design/approach: The method used in this research is normative legal research or also known as doctrinal legal research, and the statutory and comparative approaches.

Results and conclusion: The results of this study explain that written recommendations and minutes of mediation made by government officials in the field of employment, namely mediators, must be owned by workers/labourers who wish to file a lawsuit with the industrial relations court because the Constitutional Court stated that the minutes of mediation are formal requirements that the plaintiff must fulfil.

Research implications: The mediation required by Law 2/2004 slows down workers from filing a lawsuit at the Industrial Relations Court (PHI) because the mediation minutes only contain matters of a purely administrative nature; even without the mediation minutes, the PHI judges are still digging into the issues and evidence. Evidence that will be used as a judge's consideration in deciding. So that the mediation minutes are not included as evidence in employment cases.

Originality/value: The study in this research is fascinating because it will explain how the government should mediate employment cases.

Keywords: the role of government, employment, courts, industrial relations, dispute solutions.

Received: 10/06/2023
Accepted: 04/09/2023
DOI: https://doi.org/10.55908/sdgs.v11n6.1225

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RESUMO

Objetivo: Portanto, é essencial conhecer o impacto dos esforços de resolução de conflitos que devem ser realizados fora do tribunal como condição formal para entrar com uma ação no Tribunal de Relações Industriais.

Estrutura teórica: Quando há uma disputa entre trabalhadores e empregadores, a intervenção do governo e autoridade é necessária. Assim, nesta fase, o direito do trabalho está relacionado com o direito público, tanto nos aspectos do direito administrativo estatal, como no direito administrativo estatal e penal. Como uma terceira parte, o governo ajuda a resolver disputas trabalhistas por meio de bipartite, mediação, conciliação e arbitragem. Considera-se que essas etapas pré-contenciosas retardam o processo de liquidação no emprego.

Método/projeto/abordagem: O método usado nesta pesquisa é a pesquisa legal normativa ou também conhecido como pesquisa legal doutrinal, e as abordagens estatutárias e comparativas.

Resultados e conclusão: Os resultados deste estudo explicam que recomendações escritas e atas de mediação feitas por funcionários do governo no campo do emprego, ou seja, mediadores, devem ser de propriedade de trabalhadores/trabalhadoras que desejam entrar com uma ação no tribunal de relações industriais, porque o Tribunal Constitucional afirmou que as atas de mediação são requisitos formais que o requerente deve cumprir.

Implicações da pesquisa: A mediação exigida pela Lei 2/2004 retarda os trabalhadores de entrar com uma ação no Tribunal de Relações Industriais (PHI) porque as atas de mediação contêm apenas assuntos de natureza puramente administrativa; mesmo sem as atas de mediação, os juízes PHI ainda estão investigando as questões e provas. Provas que serão usadas como consideração de um juiz para decidir. Assim, as atas de mediação não são incluídas como prova nos processos de emprego.

Originalidade/valor: O estudo desta pesquisa é fascinante porque irá explicar como o governo deve mediar os casos de emprego.

Palavras-chave: o papel do governo, emprego, tribunais, relações industriais, soluções de disputas.

1 INTRODUCTION

In the Indonesian legal system, administrative/state administrative law, civil law, and criminal law comprise the position of labour law. Private interactions are the foundation for the relationship between employers and employees (Boyas et al., 2012). The foundation of the connection is contract law, a branch of civil law. If a disagreement emerges during implementation that they cannot resolve, the government serves as a supervisor or, more specifically, as a facilitator. Additionally, if the government holds a higher philosophical position than those it is supervising, the scope of its supervisory role can be maximized (Musminar, 2018). When examining the position of labour law in administrative law, two things must be taken into account: the topic of law in the
administration of the state and its function. Three things—officials, institutions, and citizens—are addressed by law while governing the state. In this situation, officials are state officials governed by administrative law rules. Its job is to carry out state activities, such as creating laws or giving permits (bestuur), determining the legislation and how the state prevents potential problems. The government must adequately handle these three responsibilities in its capacity as state administrator in the employment sector (Sitompul, 2021).

In essence, labour law safeguards and fosters a sense of security, peace, and prosperity through achieving social justice for all. Protection under labour law must be founded on two factors. First, the law is embodied in legislation (heteronomous) and independent law from an ideal perspective. In order to serve the interests of the parties involved in the production process, this legal realm must be able to reflect legal goods that align with the concepts of justice and truth, certainty, and value. Labour law pays attention to and protects workers who are socially in a weak position, as opposed to the position of relatively well-established entrepreneurs. Labour law is not just concerned with commercial actors. According to the provisions of Article 27, paragraph 2 of the Constitution NRI 1945, which states that every citizen has the right to work and a decent living for humanity, the law benefits the principle of social difference and economic level for disadvantaged workers, including levels of welfare, wage standards, and working conditions. It also works in harmony with the definition of justice. The Republic of Indonesia's 1945 Constitution also states in Article 28 D paragraph (2) that everyone has the right to receive fair and proper treatment in a working relationship and the right to work. Second, normative legislation aids at the implementation level by enforcing legal requirements and providing oversight through law enforcement agents (Fatahillah & Padang, 202; Christiani, 2016).

Workers must be empowered and in line with the provisions that every worker is given sufficient professional rights (Purba et al., 2019; Siahaan et al., 2022). Workers are not commodities but partners or significant resources in production. Employment relationships between employers and employees may not be ended without justification and by the rules of justice. Employees should not be viewed as disposable capital or commodities that can be easily bought and sold. It is necessary to involve the government in protecting workers' rights, specifically through the creation of laws and regulations that can demonstrate or reflect the principle of justice both substantively and procedurally so
that, in the event of termination of employment, workers do not experience material or moral harm (Khair, 2021).

Administratively, there is still a need for renewal or a legal revolution about disputes between workers/labourers and employers, such as when there are conflicts over rights, conflicts over the termination of employment, conflicts over interests, and conflicts between unions within one company. If you wish to file a case with the Court, particularly the Court of industrial relations, it must be done through numerous steps and be subject to extensive regulations. Based on Law 2 of 2004 concerning Settlement of Industrial Relations, there are several administrative requirements that the parties must satisfy if they wish to resolve labour disputes through litigation or to be brought to Court, explicitly having to be resolved first through bipartite, mediation, conciliation, and arbitration.

Only a few employees can go to Court since there is a pre-litigation stage, even though the workers' situation relative to the company is not financially balanced, and they are required by law to be seated equally (equality before the law). Compared to other cases, such as civil cases, where the parties can sue immediately, this pre-litigation can slow the employment settlement process. Although other methods, such as mediation, can be done outside of Court, it is not required because the judge always mediates a settlement on both sides at the beginning of the trial. Indeed, suppose both parties, the employee and the employer, accept the outcomes of the bipartite, mediation, or conciliation. In that case, they can then register with the industrial relations court by creating a collective agreement, strengthening the results of the pre-litigation decision. However, it is incorrect if the agreement does not reach a midpoint or fails. One party must register the dispute with the agency overseeing workforce affairs by attaching evidence that the bipartite, mediation, and conciliation were unsuccessful.

When workers disagree with their employers or employers, they must go through a drawn-out process even though workers are much weaker economically than employers. These pre-litigation procedures are not sufficiently required because, unlike in a civil lawsuit, any party may file a lawsuit right away without having to go through pre-litigation, let alone settle in an industrial relations court using the same procedural rules as in a civil lawsuit, as stated in Article 57 of Law No. 2 of 2004 concerning PPHI. There is a discriminatory element in creating regulations surrounding labour cases that wish to be addressed in court because the parties are urged to undertake other efforts before being brought to court to anticipate the buildup of current cases in the district court. That is what
makes the process of travel cases in the field of employment slow to resolve because there is a mechanism outside the court that workers must pass in addition to being exhausting and time-consuming and the most burdensome is for bipartite settlement of cases, mediation and conciliation of workers are not facilitated by the government and ultimately - In the end, many workers let the dispute happen without any settlement in court which will undoubtedly result in the dispute continuing.

Not to mention Perppu No. 2 of 2022 concerning Job Creation, which amends or repeals Law No. 11 of 2020 concerning Job Creation, which the Constitutional Court had previously declared to be conditionally unconstitutional in Decision No. 91/PUU-XVIII/2020 and which at the time had been opposed mainly by workers/labourers due to several contentious articles, eighty-two laws were altered by the Job Creation Law, including numerous sections of Law Number 13 of 2013 Concerning Manpower (Khair, 2021). The Job Creation Omnibus Law's employment cluster drew the most incredible flak since it was thought to be harmful to workers or labourers. The Job Creation Omnibus Law sparked such a debate in society after it was ratified that it led to protests in several Indonesian provinces from October 6 to November 6, 2020. This protest was held on October 8, 2020, due to numerous aspects of the work copyright law that were seen as harmful to the workers. If the Omnibus Law on Job Creation is passed, the employees believe their legal rights will be reduced (Iswaningsih, 2021). However, the government's role as a mediator in disputes between employees and employers is the primary subject of discussion in this study. The mediator is a government representative appointed directly by the Minister in charge of human resources.

2 THEOROTICAL FRAMEWORK
2.1 EMPLOYMENT

Residents aged 15 to 65 and of legal working age are considered in the labour force. A country's economy can advance primarily due to labour (Mabli & Dotter, 2022). Everyone who can work to generate goods and services to meet their own needs and those of others or the community is considered a member of labour, as defined by Law No. 13 of 2003. Workers are divided into educated and trained workers in this issue (Robinson et al., 2019).

According to Novick et al. (2013), employment is an economic activity that a person engages in for at least one uninterrupted hour each week to generate money or
profit. These include unpaid work tasks employees perform supporting a firm or economic activity. According to the definition currently in use, work can be categorized into four groups: 1) work that is optimal in terms of pay and hours worked; 2) work but with a discrepancy between educational background and the work occupied; 3) work but with a discrepancy between education and the work occupied and work part-time voluntarily; and 4) work part-time voluntarily (Baum & Hai, 2019). The percentage of people of working age who are economically engaged is also measured using the notion of the Labor Force Participation Rate (TPAK). The percentage of a region's entire population of 15 years or older actively employed is known as the labour force participation rate (TPAK).

2.2 INDONESIA'S JOB AND WORKING CONDITIONS

Of course, the labour force and the country's growing population have expanded in Indonesia. According to BPS RI data, there were 125.3 million workers in Indonesia in 2014. It could help prepare for the open global market. Indonesia's employment performance is among the best in the East Asia Pacific, according to the World Bank (2013). It is backed by steady economic growth, a favourable economic climate, and a quickly expanding service sector. Indonesia's job profile offers many benefits across a wide range of industries.

With the condition of workers who have benefits for Indonesia's progress, of course, workers should receive guidance to fair job protection from the government. Coaching will serve as a basis for workers to develop themselves because, in Indonesia, the competition between workers is getting higher. So, the opportunity for workers to get coaching is significant. This system is undoubtedly already in effect in several companies in Indonesia. In addition, legal protection for workers is also critical. Because workers, in carrying out their duties, certainly have considerable risk. To anticipate this, the government has regulated several regulations in labor law. As enacted Law Number 13 of 2003 concerning Manpower.

2.3 LABOR DISPUTES IN INDONESIA

The Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes is in effect in Indonesia. Law Number 22 of 1957, Concerning the Settlement of Labor Problems, is the foundation for resolving industrial relations problems. A mediator is
necessary if the parties cannot settle a dispute between the employer and the employee. Reconciling the parties is the responsibility of the mediator or intermediary employee from the regional human resources office (Suratman, 2010). If the opposing parties cannot agree, the regional labor disputes committee (P4D) is tasked with resolving the conflict. The parties may request an "appeal" and submit it to the Labor Dispute Settlement Committee at the Central level (P4P) if they believe the P4D decision to be unfair. Because they still have the option to "appeal" to the Minister of Manpower, the P4P decision is not final and binding.

Law Number 2 of 2004 concerning the Settlement of Relationship Disputes supersedes Law Number 22 of 1957, which is canceled or declared invalid since it no longer satisfies society's legal demands in employment law. Industrial. This statute also allows for the use of arbitration to settle labor disputes outside of the court system. Industrial Relations Disputes are defined as differences of opinion that lead to conflicts between employers or a combination of employers and employees or workers' unions due to disputes regarding rights, disputes interests, disputes over the termination of employment, and disputes between unions within one company in Article 1 number 1 Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement (UUPPHI). Furthermore, the UUPPHI defines disputes over interests as conflicts that occur in working relationships due to differences in opinions regarding creating and modifying working conditions as specified in a work agreement, company regulations, or a joint work agreement (Hamid, 2021).

3 METHODOLOGY

The data collection method used in this legal research is normative legal research, also referred to as doctrinal legal research, which is research done by reading secondary data made up of primary, secondary, and tertiary legal materials from libraries. Both a statutory approach and a comparative approach are used in this investigation. According to concepts, theories, rules and regulations, doctrine, legal principles, professional judgments, or the researchers’ opinions, this study's analysis method is qualitative analysis (Ishaq, 2017). Researchers further analyse the problem using various secondary sources, such as journals, books, the internet, opinions of people, and other materials deemed pertinent to the problem's subject.
4 RESULT AND DISCUSSION

Only civil interests were at stake when employers and employees started working together. However, government action and power are required when they disagree or hold divergent views. As a result, labour law is currently connected to public law in both the context of criminal and constitutional law. In order to attain peace of mind and continuous commercial operations, labour legislation must uphold justice, order, and security for parties involved in the production process. Experience has shown that businesses often treat employees or labourers arbitrarily, necessitating a genuine and thorough legal defence from the state (Khakim, 2007). Everyone who can labour to produce goods and services for their own needs and the community's needs can include those who work for pay and those who work independently without pay. "labour" describes those who hold official positions, are employed, or have never held a job. In other words, a workforce is more broadly defined than a worker or labourer (Wijayanti, 2021). The government wishes to replace the term "labourers" with "workers" since, in addition to having the connotation of manual labourers, the term "labourers" also represents a group that is consistently opposed to the employer. This has led to the term "labourers" or "aligned workers." As a result, the name labour union was changed to labour union during the New Order period (Soedarjadi, 2008).

Therefore, the employment relationship is founded on a contract between the employee and the employer or employers. Therefore, a labour agreement detailing each party's rights and obligations as an employer and employee proves that a person works for another person or a company/institution (Klimovskikh et al., 2023). At this point, labour law is tied to public law in terms of state administrative law and criminal law because government action and authority are required when disagreements or disputes occur (Andrias, 2016; Fedchenko et al., 2023).

When there is a disagreement between employees and employers over a statutory provision, the parties must use a settlement mechanism that is settled outside of court; the author refers to this process as pre-litigation. The stages of settlement outside of court include bipartite efforts, mediation, conciliation, and arbitration. The government is permitted to intervene with parties whose administrative minutes are issued by the workforce office by the worker's residence during this pre-litigation stage. Various ways and methods can be used to resolve disagreements, such as conciliation or arbitration. Conciliation is used to resolve disagreements over interests, disagreements over the
termination of an employment relationship, or disagreements between trade unions and labour unions. Arbitration is used to resolve disagreements over interests or between unions of workers. If efforts to resolve through conciliation or mediation do not result in an agreement, one of the parties may file a lawsuit with the Industrial Relations Court. This is a crucial requirement that parties must meet to take a case to the Industrial Relations Court based on Article 5 of Law 2/2004. Both parties must bring a lawsuit before the Industrial Relations Court.

Suppose there are no minutes of a settlement reached through mediation or conciliation. In that case, the Industrial Relations Court judge is required under Article 83 paragraph (1) of Law 2/2004 to return the lawsuit to the plaintiff. According to the requirements of the Quo Article, an employee's claim cannot be accepted by the Industrial Relations Court if it is not accompanied by a report of mediation or conciliation (Niet Ontvankelijke Verklaard). According to a thorough reading of Law 2/2004 on the Settlement of Industrial Relations Disputes, neither the mediator nor the conciliator is required by any mechanism to record the decisions made during mediation or conciliation outcomes. Due to the uncertainty of the quo statute, some employees from several companies petitioned the Constitutional Court for a judicial review.

In Constitutional Court Decision Number 68/PUU-XIII/2015, the applicant considered Article 13 paragraph (2) letter a and Article 23 paragraph (2) letter an of Law 2/2004 respecting PPHI. A petition for judicial review of Law Number 2 of 2004 About the Settlement of Industrial Relations Disputes (UU PPHI) was filed by five employees with the Constitutional Court (MK). The posting of mediation findings minutes by mediators who assist in resolving labour disputes is required under Decision Number 68/PUU-XIII/2015. The Court decides that paragraph (2) letter and Article 13 of the PPHI Law do not provide legal certainty. Since the date of publication and the ability of the mediator or conciliator to issue minutes of mediation settlement or minutes of conciliation settlement are not governed by this article. The current report does not guarantee the petitioners' equal treatment before the law, protection, and fair legal certainty as specified in Article 28D paragraph (1) of the 1945 Constitution.

The Court made it clear that although a written suggestion is not required to file a lawsuit at the Industrial Relations Court, the minutes of the resolution of mediation or conciliation are legal requirements. This is done so that, under Article 83 paragraph (1) of the PPHI Law, the Industrial Relations Court Judge will be obligated to send the
lawsuit back to the plaintiff if it isn't accompanied by minutes of a settlement through mediation or conciliation. Additionally, because these terms are required, mediation or conciliation must be employed as a first step in resolving labour disputes. Therefore, the plaintiff must compile evidence in the form of minutes of settlement from mediation or minutes of payment from conciliation before presenting a claim before the Industrial Relations Court. The phrase "written recommendation" in Article 13 paragraph (2) letter an of the PPHI Law is unlawful as long as it does not mean "if an agreement is not reached on the settlement of industrial relations disputes through mediation, the mediator issues a written recommendation in the form of minutes of settlement through mediation." Similar reasoning can be applied to Article 23 paragraph (2) letter an of the PPHI Law, which, in contrast to the 1945 Constitution, states that if an agreement on the settlement of industrial relations disputes through conciliation is not reached, "the conciliator issues written recommendations in the form of minutes of settlement through conciliation" (www. more. id).

The structure and content of the minutes of settlement in mediation or conciliation are not governed by the PPHI Law. The provisions of Article 6 of the PPHI Law state that: (1) Every negotiation as referred to in Article 3 must be made of minutes signed by the parties; (2) The minutes of negotiations as referred to in Article 3 must be in writing and contain the terms of the agreement, are the format and content that can be used, by the Court:

a. Full names and addresses of the parties;
b. Negotiation date and place;
c. Main issue or reason for dispute;
d. Opinion of the parties;
e. Conclusions or results of negotiations; And
f. The date and signature of the parties conducting the negotiations

Previously, the five-person applicant claimed that Article 83 paragraph (1) of the PPHI Law requires that the minutes of the settlement of mediation and conciliation be attached before an Industrial Relations Court can be established. However, only mediators or conciliators can offer suggestions under Article 13 (2) letter a and Article 23 (2) letter an of the PPHI Law. One of the reasons the applicant claimed that the alternative concept of dispute resolution through mediation and conciliation regulated by the PPHI Law did not give rise to mediation which facilitated the parties to be able to
negotiate, was because the mediator's staff became a central figure who was given the authority to make suggestions that seemed quasi-execution of the judge's verdict. It is only a ticket for filing a lawsuit at the appropriate time.

4.1 LEGAL ASPECTS OF STATE ADMINISTRATION IN LABOR DISPUTES

State administrative law governs government administration and the interactions between the government and its constituents. State administrative law is crucial in a country with a robust legal system, like Indonesia, where all governmental decisions must be grounded in the law (Khairo, 2023; Juvenile, 2017). In a welfare state, the role of the government goes beyond merely carrying out the decisions made by the legislative. According to the welfare state theory, the government must advance the common good or promote social welfare. To fulfil this duty, the government is given the power to interfere in people's lives as long as it does so within the bounds of the law. The government is granted the power to enact laws and enforce rules in addition to the power to intervene (Kerwer, 2005; Bray, 2010).

In the field of social science known as "state administration," the three critical pillars of a state's existence—the legislative, judicial, and executive branches—as well as issues about the general public—public policy, public management, development administration, state goals, and administrative ethics—are examined. Country State administration can be defined as the study of running a government agency; even though they both study organizations, management science and public administration are different. Public administration studies public/government institutions, such as departments and offices, from the district to the main level, just like management investigates the management of private businesses. Bureaucracy, the creation, application, and assessment of public policies, development administration, local government, and good governance are all included in this study (Munaf, 2015).

Government action (bestuurshandelingen) is theoretically defined as an action or deed performed with government equipment (bestuursorgaan) in order to carry out government functions (bestuursfunctie). These official actions can be divided into 2 (two) categories, namely:

1. Actions based on the law (rechtshandelingen), namely government actions that can cause inevitable legal consequences to give birth to rights and obligations. These actions are directly related to the authority possessed or attached to their
2. Actions based on facts (feitelijkehandelingen), namely government actions that are not directly related to their authority so that they do not cause legal consequences. For example, the government assists in the inauguration of bridges and others.

Private legal actions (privatrecht handling) and public legal actions (publiekerecht handling) can develop from government legal actions (rechtshandelingen). Private legal actions are legal actions taken by the government in conjunction with other (private) parties in the course of carrying out governmental tasks, such as entering into contracts for the production of physical infrastructure, buying specific goods, and entering into contracts/agreements to carry out works (Harlow, 1980). On the other hand, public legal actions are government legal actions that can be one-sided (eenzijdig publiekrechtelijke handling) or two-sided (meerzijdig publiekrechtelijke handling). Legal actions carried out unilaterally by the government are referred to as one-sided legal actions, and they can result in both specific and general rulings. In contrast, two-sided legal actions are those that the government pursues with the consent of the two parties (public legal bodies) involved (Patira, 2016; Juvenile, 2017; Stone, 2017).

The government has the power to decide and take actions related to government management because it is a public legal body. Government Administration Decisions, also known as State Administration Decisions or State Administration Decisions, are written judgments made by government agencies and officials while doing government business. The actions of government officials or other state administrators to take and not take concrete actions within the context of administering government are referred to as government administration actions (from now on referred to as actions) (Dimock, 1937; Juvenile, 2017; Jiwantara et al., 2018; Leheza et al., 2023).

State administration officials are the primary actors in carrying out legal acts and activities, the primary functions of government, and primary government service functions. However, in order to do so, they must have unambiguous authority. Many literary works use attribution, delegation, and mandate as their sources of authority. According to Hadjon (1997), every government action must be supported by good power. The three sources of this authority are attribution, delegation, and mandate. Delegation and mandate authority are powers that result from the delegation, whereas attribution authority is typically defined through the division of state power by the Constitution.
Philipus M. Hadjon (UGM Press) made the distinction between delegation and mandate. The obligation and accountability changes to the delegates in the case that the delegation regarding the delegation method is made from one government organ to another government organ with statutory restrictions. The delegate giver is not permitted to utilize that authority again until it has been revoked by following the "contrarius actus" concept. In other words, every modification or revocation of a regulation enforcing the law is carried out by the official who specifies the relevant regulation and is carried out with rules equal to or higher. The delegation process in the context of superior-subordinate relationships is customary in terms of the mandate. The person who gave the order nevertheless bears responsibility and accountability. The person who issued the mandate can exercise the delegated authority at any time (Munaf, 2015; Batalli & Pepaj, 2018). The government engages in various legal actions by relying on legality. Every legal activity entails using authority, which entails a responsibility to account for one's actions (Ridwan, 2018; Arendt, 1958).

It can be inferred from the previously discussed concept that actions conducted by a government official who has been formally appointed, such as a mediator appointed by the Minister of labour, can be seen as government administration and used to help resolve labour disputes. According to Article 1 of the 2014 Regulation of the Minister of Manpower and Transmigration Number 17, a Mediator is defined as an employee of a government agency with responsibility for the workforce who satisfies the requirements as a Mediator determined by the Minister to be tasked with carrying out mediation and must provide written advice to the parties involved. Disagreements over resolving rights disputes, interest disputes, problems with the termination of employment, and labour union conflicts inside a single firm. Additionally, the Minister chooses other special mediators to serve as mediators since he is also the director of the provincial or district/city workforce service agency. A mediator or conciliator's job is one that they have obtained based on a decree from the relevant Minister, in this case, the Minister of the workforce. Because it is founded on statutory regulations, a Mediator's authority is obtained by attribution through appointment by the Minister. When someone exerts their power for and on behalf of their position, they might be said to be acting in their capacity as an official (ambtshalve).

It should be highlighted that the government administration by a mediator only takes the form of acting under authorization gained based on legislative rules and the
outcomes of mediation in the form of suggestions and mediation minutes. Because the written recommendations and minutes provided by the mediator or conciliator are only administrative requirements that must be fulfilled by the parties (employers & employees) who wish to file a lawsuit at the industrial relations court, they are not the subject of a state administrative dispute (TUN). As is common knowledge, industrial relations conflicts must be settled first through bipartite talks and consensus-building. If the two parties cannot agree to bipartite negotiations, one or both must file a complaint with the local workforce affairs agency and document their efforts. The local workforce sector agency must offer the parties the option of choosing a settlement through arbitration or conciliation after obtaining the records from one or both parties. Suppose the parties cannot agree on whether to resolve their dispute through arbitration or conciliation within 7 (seven) working days. In that case, the agency handling workforce concerns will assign the dispute's resolution to the mediator. If the parties cannot agree to conciliation or mediation, one of them may initiate a case with the Industrial Relations Court.

The author claims that even though a mediator's actions are not the subject of a State Administrative dispute (TUN) because the recommendations and minutes of mediation that the official government issues only serve to operate the government's machinery and are used in the context of performing official duties, the actions of government officials (mediators) who are required to attach the minutes of mediation settlement as a formal requirement in these procedures should not be required since, in addition to taking a long time, they also ignore the position of employees who are not on an equal footing with employers economically. The author also believes that the panel of judges at the industrial relations court itself must look at the legal realities between the parties if the formal requirements of a mediation treatise are not required. Therefore, in the absence of the mediation minutes, the judge is also forced to evaluate what legal facts will be considered when deciding without paying attention to the details of the mediation minutes. The judge also considered the fundamental disagreements between the parties and noted any information supporting their claims or objections.

When a trade union or labour union reports alleged irregularities in the application of a specified time work agreement (PKWT) made by the employer company to the agency in charge of workforce affairs in the city government or local district, the government becomes involved in making decisions (beschikking) if there is a problem. Additionally, the department in the municipal or regional government in charge of human
resources inspects the pertinent business and issues a Labor Inspector's Employee Memorandum. According to Presidential Decree No. 21 of 2010, which is by Article 176 of legislation 13/2003 and further regulated in Article 3 paragraphs (1) and (2), the government, in this case, labour inspectors, are granted the power to monitor the application of labour legislation (Sitompul, 2021). Labour inspectors have the authority to make written inspection notes or determinations as part of their duty to monitor the application of labour law.

The inspection note and the labour inspector's written conclusion differ significantly even though labour inspectors give both. Inspection notes detail the outcomes of labour inspectors' examinations of employers or employers, and they often guide how to stop infractions or put labour laws into effect. As a result, the audit note's nature is advisory and does not include an executorial component. As stated in Article 1 Point 9 of Law 51/2009, the written decision of a labour inspector is a State Administrative Decision that is precise, specific, and final and has legal ramifications for an individual or civil legal entity. As a result, before it can be demonstrated that the labour inspectorate's written decision is incorrect and must be overturned, it must first be accepted as authentic (Decision of the Constitutional Court No. 7/PUU-XII/2014).

Therefore, the government's position and role extend beyond creating laws and regulations (regeling). The government can also play a role in making decisions (beschikking) that are specific, unique, and binding, such as the right of labour inspectors to review reports. From workers/labourers to the corporation accused of breaking the agreement about their status. The function of the government as a supervisor in the workforce is broad. However, the government should put employees' and labourers' interests first while respecting businesses' rights and powers. The requirement that the obligation must at least go through mediation by being required to attach the minutes of mediation issued by the mediator from the government as a third party who helps to resolve disputes hinders litigation to industrial relations courts.

Requiring bipartite and mediation for the resolution of labour disputes is indeed an open-law policy for legislators; however, these steps should not be required because their impact is sufficient to impede the actions of workers who wish to file a lawsuit in court; instead, pre-litigation steps should have been taken. This is an excellent non-mandatory option, even though it is not required.
4.2 FIRST INSTANCE INDUSTRIAL RELATIONS COURT AS JUDEX FACTIE

Judex face and judex jurist are names still used today by the Supreme Court judiciary due to the distinctions in the tasks performed at each level of the judicial system. Based on how decisions are made, Indonesia has two levels of justice: judges face and judex jurist. In order to review the facts and supporting evidence in a case, the District Court and the High Court are judex facts (Telaumbanua, 2017). Judex face investigates a case's evidence and establishes its facts. As a judge jurist, the Supreme Court solely considers how the law is applied to a matter and does not consider its facts (Constitutional Court Decision No. 92/PUU-XIII/2015). Judex juris means a panel of judges evaluates the application of the law instead of the judges' faces, which means a panel of judges reviews the facts. Courts of first instance, courts of appeal, and courts of cassation make up the Supreme Court's judicial system. The Supreme Court, as a court of cassation, only considers the application of the law in a case and does not inquire into the facts of the matter. The courts of first instance and courts of appellate level are judex face and have the authority to examine the facts and evidence of a case and determine the facts of a case. Courts of first instance accept, consider, rule on, and settle matters by their expertise. While the court that receives, considers, and decides matters that the court of first instance has determined is the appeal-level court. The appellate court reconsiders the facts and evidence already in existence while also looking at the legal issues. The Supreme Court, the appellate court, no longer reviews the case's facts and supporting evidence. The Constitutional Court's Decision No. 71/PUU-XVIII/2020 states that the judex jurist considers how the judex fact has applied the law to the facts.

Based on the preceding comprehension, under the District Court's purview, the Industrial Relations Court is a judex face at the first level. In reviewing cases in court at the first level, judges are expected to look at the facts and evidence of a case and the application of the law. This procedure is known as the judex face. The outline of the dispute's subject and causes is one of the features of the mediation minutes if we apply it to labour matters handled by the Industrial Relations Court, which requires mediation minutes as a formal requirement for registering a lawsuit at the Court of Justice. Without realizing it, it turns out that one of the things the judge must examine for himself to ensure that the results of this mediation treatise do not conflict with or come before the judge's authority to examine the facts or chronology of a case is to outline the subject matter and the reasons for the dispute in the mediation treatise. The judge will independently research
the relevant legal evidence and facts, or the panel will later use the mediation minutes directly when concluding. The minutes of mediation are not to be used as material for the judge to consider in deciding a case, as we know, because the judge hears the parties directly during the trial. Judges must also explore and look for legal facts that happened by listening to the parties directly. Litigation. This indicates that the judge only requires the mediation minutes to be completed after some time. The judge can identify the crux of the issue and be able to resolve it without the aid of a mediation treatise.

The formal need that employees attach mediation minutes in order to file a lawsuit with the industrial relations court has little bearing on the panel of judges assessments and judgments. In labour disputes, the minutes of the mediation should not be utilized as a formal prerequisite to bringing a lawsuit. Thus, the phrase "judex facts," as used in our judicial system, conflicts with Article 83 paragraph (1) UU 2/2004 PPHI. Having mandatory pre-litigation requirements in employment cases increasingly demonstrates that workers have not received legal protection on par with other cases, especially in court, where we consider the principle of simple, fast, and low cost as one of the things that must be put forward when entering court proceedings, which requires that they receive the facilities supported by the system.

There are no known legal avenues for appeal in the PHI case, although Articles 110 to 112 of Law Number 2 of 2004 specify direct legal avenues for cassation, which is a way for parties to challenge the PHI decision. Only cases involving rights issues and disputes involving layoffs may be appealed to the PHI for cassation; however, in situations involving disputes over interests and conflicts between trade unions/needs inside a corporation, the PHI's judgment is final and binding. Since Law Number 2 of 2004 does not also define the grounds for submitting an appeal, the grounds for filing an appeal in cases involving labour disputes before the Industrial Relations Court must be governed by civil procedural law, namely:

a. Not authorized or exceeding the limits of authority;

b. Incorrectly applying or violating applicable laws

c. Failure to comply with the requirements required by laws and regulations threatens negligence with cancelling the decision.

Regarding labour disputes, only decisions rendered by the Arbitration Institution and submitted to the Supreme Court may be the subject of judicial review (PK) requests. If the decision is believed to contain the elements listed in Article 52 paragraph (1) Law
Number 2 of 2004 (Utomo & Pamungkas, 2022; Mustakim, 2022), then this application must be submitted no later than 30 (thirty) working days following the issuing of the Arbitration award.

5 CONCLUSION

A mediator or conciliator appointed directly by the minister to handle the task of being a third party authorized to issue letters of recommendation and minutes of mediation as the only formal requirements for filing a lawsuit against the industrial relations court is a party with legal standing to assist in resolving disputes in the field of employment (Popov, 2013). The government's good intentions to aid in the resolution of disputes in the area of employment appear to have backfired on workers/labourers with Article 83 of Law 2/2004 concerning PPHI, which states that if a lawsuit is not accompanied by minutes of a settlement through mediation or conciliation, the Industrial Relations Court judge is required to return the case against the plaintiff. This article burdens employees because, in addition to preventing them from filing lawsuits in court right once, it also forces them to go through a drawn-out procedure that takes a lot of time. Although the necessity for mediation-based dispute resolution persists, resolving issues without mediation or conciliation is preferable. It is used as a decision that is optional and not required. The written recommendation and mediation minutes, formal requirements for filing a lawsuit, state that they are not of sufficiently significant utility. With the mediation minutes, the judge will automatically consider what legal facts are relevant to the case at hand without paying attention to the mediation outcomes or the administrative written recommendations. As a result, in our judicial system, known as judex face and played by the judiciary at the first level, it is acceptable not to consider the contents of the mediation minutes. This is because judges must seek facts and evidence and apply the law, and without mediation minutes, the court will still be able to determine the middle ground in a dispute.

ACKNOWLEDGEMENTS

I thank the Muhammadiyah University of North Sumatra for providing assistance and support to develop research to be used as scientific research results.
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Industrial Relations Dispute Mediators Must Publish the Minutes of Mediation, through the Constitutional Court of the Republic of Indonesia, https://www.mkri.id/index.php?page=web.Berita&id=12141


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