A GUIDE

ON LAW NO. 2 OF 2004 REGARDING SETTLEMENT OF INDUSTRIAL RELATIONS DISPUTES

Foreword

Act No.2 of 2004 regarding Industrial Relations Dispute Settlement has been enacted on 14 January 2004, through State Gazette No.6 of 2004 and will take effect one year later. The Act replaces the two (2) previous Acts, i.e., Act No.22 of 1957 regarding Labour Dispute Settlement and Act No.12 of 1964 regarding Termination of Employment in the Private Companies.

The Industrial Relations Dispute Settlement Act provides instrument to settle industrial disputes outside and inside the court. The former Act No.22 of 1957 and Act No.12 of 1964 introduce the settlement process only outside the court. Act No.2 of 2004, however, enshrines the settlement process outside the courts pursuant to the need of society.

Besides the different processes for dispute settlement outside the court, Act No.2 of 2004 established the method to settle the dispute inside the court, which is a new method compared to the arrangement under Act No.22 of 1957 and Act No.12 of 1964. Therefore, the efforts to give wide understanding of the Act are necessary to ensure the smooth and timely implementation of the Act.

This book, attempts to provide a better understanding to the background, provisions and substances contained in the Act, so that the implementation of the law will not be hampered by confusion due to conflicting interpretations that might arise.

Finally, we thank and appreciate the International Labour Organization (ILO) Jakarta through its ILO/USA Declaration Project in Indonesia backed the U.S. Department of Labour, which has supported the publication of this manual book.

Hopefully this book will be of benefit to all actors in industrial relations in Indonesia and that Act No.2 of 2004 become an effective instrument in providing legal certainty in the industrial relations through a dispute settlement mechanism, which is simple, inexpensive, fast, and committed to accord justice for all parties.

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CHAPTER I

BACKGROUND

In the era of industrialization, industrial relation disputes have become more complex; it is therefore necessary to establish an institution that ensures fast, appropriate, fair and inexpensive settlement of labor disputes. The former Law No. 22 of 1957 regarding Settlement of Industrial Relation dispute and Law No. 12 of 1964 regarding Termination of Employment in Private Companies are deemed to be no longer relevant to the new situation.

The new law is needed for the following reasons:

FIRST : The application of Law No. 5 of 1986 regarding the State Administrative Court allows decisions made by the Central Committee for Settlement of Labor Disputes (P4P), which were originally designed to be final, to be brought forward to the higher State Administrative High Court and an appeal may subsequently be filed with the Supreme Court. This process takes a relatively long time and therefore, it is not considered appropriate for labor cases that require immediate settlement as they affect production and employment processes.

The Central and Regional Committees for the Settlement of Labor Disputes (P4P and P4D) are regarded as quasi-judicial or quasi courts. "Quasi" because these institutions are not judicial institutions as specified in Law No. 14 of 1970 regarding Judicial Authority Principles and "Court" because these institutions are authorized to "resolve" labour cases. P4D/P4P institutions consist of government representatives and therefore their decisions were regarded as decisions of the state administrative officials which are subject to review by the State Administrative Court.

SECOND : The Minister has the authority to postpone or revoke P4P decisions which is commonly referred to as the veto right of the Minister. This veto right has been criticized as an undue interference from government and therefore no longer justified under an emerging paradigm in a democratic society, wich requires such government interference to stop.

THIRD: Law No. 22 of 1957 specifies that only one particular trade union can be a party in the resolution of industrial relation disputes. However, Law No. 21 of 2000 regarding trade unions, consistent with ILO Convention No. 87 regarding the Freedom of Association and Protection of the Right to Organise, which has been ratified by Indonesia, specifies that every worker/labour has the opportunity to establish/join any organization he/she likes. There are now many free and independent unions registered under Law No.21 of 2000.

Thus, Law No. 22 of 1957, which recognized only one particular trade union as a party to a labor dispute, is no longer relevant or valid under the new paradigm at industrial tribunal, which respects freedom of association and promotes democratization at workplaces. Under Law No. 22 of 1957, individual worker/labor can only file a civil case at public courts.

CHAPTER II

PRINCIPLES STIPULATED UNDER LAW NO.2 OF 2004

MEANING OF INDUSTRIAL RELATION DISPUTES

Industrial relation disputes relates to difference or conflicts of views between employer or employer association and workers/labors or trade union in relation to rights, interests, employment termination and relations among trade unions in a company.

TYPES OF INDUSTRIAL RELATION DISPUTES

There are 4 types of disputes under the Act:

1. Rights disputes i.e., dispute arising from failure to fulfill one's rights due to different understanding or interpretation in the implementation labour of laws, work agreements, company regulations or collective labor agreements.
2. Interests disputes i.e., dispute arising from different opinions or positions on the drafting and/or change of work conditions stipulated in work agreement, company regulations or collective labor agreements.
3. Employment termination disputes i.e., dispute arising from different opinions regarding employment termination.
4. Disputes among trade unions i.e., disputes between trade unions within one company due to different opinions on membership, and implementation or exercise of rights and obligations.

BIPARTITE NEGOTIATIONS

The Act emphasizes the importance of settlement through bipartite negotiations. The bipartite settlement aims to secure a "win-win solution"

Settlement Procedures Outside Industrial Court

Disputes may be settled outside the Industrial Court. These means of settlement can be faster and better accommodate the sense of justice expected by the concerned parties because settlement is reached in a voluntary and amicable manner.

There are 4 (four) main types of settlement outside the Industrial Court as follow :

- Bipartite Negotiations
- Mediation
- Conciliation
- Arbitration

Dispute Settlement Procedures Outside Industrial Court

Bipartite Settlement

The parties must give priority to bipartite settlement before trying other settlement methods which means they should negotiate first before inviting any third party to help in resolving their dispute. This is usually called the bipartite approach.

Bipartite settlement should be reached within 30 (thirty) workdays after the start of negotiation. If either party refuses to negotiate or has joined such negotiation but fails to reach any agreement within such period, the bipartite negotiation shall be considered to have failed.

However when such bipartite negotiation results in an agreement, a binding collective agreement shall be made and shall become law, which must be respected by both parties. The collective agreement shall be registered with the Industrial Court in the District Court where the parties signed the collective agreement. When either party fails to conform to such collective agreement, then the other party may request for an execution through the Industrial Court in the District Court where such collective agreement is registered, through an order for execution.

When the parties to bipartite negotiations fail to reach any agreement, then either or both parties may file their case at a local authorized labour settlement agency.

Settlement Through Mediation

Mediator shall refer to a government official responsible for mediating labour disputes. A qualified mediator shall be assigned by the Minister to mediate and shall be obligated to provide a written recommendation to both parties so as to resolve their dispute on rights, interests, employment termination and dispute among trade unions within one company.

The following disputes can be settled through mediation:

- Dispute on rights;
- Dispute on interests;
- Dispute on employment termination; and
- Dispute among trade unions within one company.

A mediator must, within 7 (seven) workdays after receiving a written request, examine such case and immediately hold a mediation session.

When an agreement is reached through mediation, a collective agreement shall be made and signed by both parties, acknowledged by mediator and filed at the Industrial Court in the District Court where the parties enter into such collective agreement.

However, when an agreement is not reached, the mediator shall issue a written recommendation, within 10 (teen) workdays after the first mediation session, to both parties. The parties shall then give their opinions in writing to the mediator within 14 (teen) workdays after receiving such recommendation.

Either party who fails to give his/her opinion shall be deemed to have rejected such written recommendation.

When both parties agree with the mediator's written recommendation, the mediator must help the parties to enter into a collective agreement within 3 (three) workdays after such written recommendation is agreed and file such agreement at the Industrial Court in the District Court where the parties entered into the collective agreement.

When either party or both parties reject such written recommendation, then either party may file a request for settlement of such dispute through the Industrial Court in the local District Court.

A mediator must complete his/her task within 30 (thirty) workdays after the date of the request for mediation.

Settlement through Conciliation

Conciliators shall refer to one or more persons qualified as conciliators and are appointed by the Minister. Conciliators shall be assigned to perform conciliation and must give their written recommendation to the parties in dispute so as to resolve their dispute on interests, dispute of employment termination and dispute among trade unions within one company.

The following disputes can be settled through conciliation:

- Interest dispute;
- Employment termination dispute; and
- Dispute among trade unions within one company.

Settlement through conciliation shall be made after the parties file a request for conciliation in writing through a conciliator appointed and agreed by the parties. Conciliators must, within 7 (seven) work days, examine such case and hold the first conciliation session on, at the latest, the eighth day.

When an agreement is reached through conciliation, a collective agreement shall be made and signed by both parties, acknowledged by conciliators and filed in the Industrial Court in the District Court where the parties entered into such collective agreement.

However, when such agreement is not reached through conciliation, the conciliator shall issue a written recommendation, within 10 (teen) workdays after the first conciliation session, to both parties.

The parties shall then give their opinions in writing to the conciliator within 10 (teen) workdays after receiving the conciliator's recommendation.

When the parties agree with the conciliator's written recommendation, conciliators must help the parties to enter into a collective agreement within 3 (three) workdays after such written recommendation is approved and file such agreement at the Industrial Court in the District Court where the parties entered into the collective agreement.

When either party or both parties reject such written recommendation, then either party may file a request for settlement of such dispute through the Industrial Court in the local District Court.

Conciliators must complete their task within 30 (thirty) workdays after the date of the request for conciliation.

Conciliators must be registered at an authorized agency for labour affairs and comply with the requirement set by the Minister or authorized official on labor affairs.

In performing their task, conciliators shall be entitled to receive fees to be paid by the State.

Settlement through Arbitration

Arbitrators shall refer to one or more persons appointed by the parties involved in a dispute from the list of arbitrators provided by the Minister, to resolve disputes on interest, and disputes between trade unions within one company. An arbitration award or decision shall bind the parties and shall be final.

The following disputes can be resolved through arbitration:

- Interest dispute; and
- Dispute among trade unions within one company.

Arbitration Agreement

Settlement through arbitration must be based on an agreement by the parties in dispute and expressed in an Arbitration Agreement. Such agreement shall contain disputed principles handed over to arbitrators, number of arbitrators required and a statement from the parties committing to obey and execute the arbitrator's decision.

The parties may appoint one or more arbitrators in an odd number for a maximum number of 3 (three) arbitrators. Arbitrators must be those appointed by the Minister and their jurisdiction extends all over Indonesia.

Appointment of Arbitrators

Appointment of a single arbitrator shall be based on written agreement by the parties. When the parties agreed to appoint several arbitrators in writing in an odd number, each party may select one arbitrator within 3 (three) workdays, while the third arbitrator to be subsequently appointed as the Chairman of the Arbitration Panel shall be determined by the two previously appointed arbitrators within 7 (seven) workdays.

When the parties fail to agree to appoint a single or several arbitrators, then based on the request of one party, the head of court may an appointan arbitrator from the list of arbitrators as stipulated by the minister.

Agreement on the Appointment of Arbitrators

Before performing their tasks, the appointed arbitrators shall firstl enter into an Agreement on the Appointment of Arbitrators with the concerned parties. Such agreement shall explicitly specify the objects of dispute handed over to arbitrators for resolution and decision and a statement by the parties to obey and execute the arbitrator's decision.

Case Examination

Examination by arbitrators or arbitration panel shall be performed in closed sessions, unless specified otherwise by the parties in dispute.

The parties in dispute may be represented by their proxies through a special power of attorney in the arbitration session. If the parties or their proxies fail to attend such session, despite proper invitation, without giving proper reasons, then the arbitrator or the arbitration panel may revoke the Agreement on the Appointment of Arbitrators and their task shall be deemed to have been completed.

If either party or his/her proxy fails to attend the first and subsequent sessions, despite proper invitations, without giving proper reason, then the arbitrators or the arbitration panel may examine the case and give their decision without the presence of a party or his/her proxy.

Claim of Breach against an Arbitrator

Arbitrators appointed by the concerned parties based on an arbitration agreement may be charged for breach at the District Court if:

- There are sufficient reasons and authentic evidence that arbitrators would not perform their task independently and would side with either party in making their decision;
- It is proven that there is a family tie or work relationship with either party or his/her proxy.

The Decision of the District Court on such breach cannot be questioned.
Duration of Arbitration

Arbitrators or the arbitration panel must resolve industrial relation disputes within 30 (thirty) workdays after the date of proceeding of Agreement on the Appointment of Arbitrators which may be extended for a maximum 14 (fourteen) work days upon the agreement of the parties.

When the parties fail to reach an agreement, arbitrators or the arbitration panel shall proceed with arbitration proceeding. The parties shall be given the opportunity to express their positions and opinions either in writing or verbally with corresponding evidence. To obtain materials required in order to examine the case, arbitrators or the arbitration panel may request the parties to explain their claim in writing, or to submit other evidence.

Arbitrators Decision

Arbitration decisions shall be made in accordance with the requirements of law, justice, freedom and applicable regulations. The arbitrator's decision shall be final and binding to the parties.

When either party fails to execute on the arbitrator's decision, then the other party may file a request to an Industrial Court under the District Court whose jurisdiction covers the domicile of the party for the execution of such decision.

Petition of Cancellation

Although the arbitrator's decision is considered final and binding, when a decision is considered to cause damage to either party, a cancellation by the Supreme Court over such decision may be requested. The grace period to propose such a review shall be at the latest 30 (thirty) days after the arbitrator's decision is made.

A cancellation may be proposed if one of the followings reasons is present:

- Letter or document submitted during the examinati on after the decision was made is deemed or declared to be false;
- After such decision is made, a decisive document hidden by the opposite party is found;
- Such decision is based on fraud committed by either party during

the examination of such dispute;

- Such decision is beyond the arbitrators' authority; or
- Such decision is against applicable laws.

When such request is granted, the Supreme Court shall determine the consequence of revoking the entire or part of the arbitrator's decision. The Supreme Court shall decide the request for review cancellation 30 (thirty) workdays after the date of receipt of such request.

CHAPTER III

INDUSTRIAL COURT

DEFINITION

Industrial Court shall mean a special court established within the District Court and authorized to examine, hear and render decisions over industrial relation disputes.

Initially, on Industrial Court shall be established in every District Court in all provincial capital cities whose jurisdiction covers a particular province.

JURISDICTION OF THE INDUSTRIAL COURT

Cases which can be brought to the Industrial Court are as follows:

a. At the first level of the Industrial Court:
   - Rights dispute; and
   - Employment termination dispute

b. At the First and Final level:
   - Interest disputes; and
   - Dispute between tarde unions within one company.

STRUCTURE OF THE INDUSTRIAL COURT

The Industrial Court at the District Court shall consist of the following:

- Judge;
- Ad-Hoc judge;
- Junior Registrar; and
- Substitute Registrar.

The Industrial Court at the Supreme Court shall consist of:

- Supreme Court Judge;
- Ad-Hoc judge at the supreme court ; and
- Registrar.

Ad-Hoc Judges

Ad-Hoc judges in an Industrial Court at the District Court shall be appointed and terminated based pursuant to the decision of Supreme Court Head .

Initially, Ad-Hoc Judges at the Industrial Court in the District Court shall consist of at least 5 (five) persons each from employers' organization and workers'/labors' organization.

Before being proposed by the Supreme Court to the President, Ad-Hoc judges must firstly obtain approval from the Minister in change of the labor matter.

Qualifications of Ad-Hoc Judges

- Indonesian citizen;
- Believe in the one God;
- Loyal to *Pancasila* and the 1945 Constitution;
- Minimum 30 years old;
- Physically healthy based on a physician's certification;
- Reputable, honest, fair and has good conduct;
- Minimum bachelor degree holder except for Ad-Hoc judges at the Supreme Court who must hold a law degree
- Has at least 5 years experience in industrial relations.

Multiple Positions Prohibited

In order to work professionally, Ad-Hoc Judges must not occupy multiple positions. Such prohibition for multiple positions shall cover:

- Member of a State High Institution
- Head of Province/Region;
- Member of regional house of representatives;
- Indonesian Military (TNI)/Police Personnel;
- Civil servants;
- Management of political party;
- Lawyer;
- Mediator;
- Conciliator;
- Arbitrator; and
- Management of trade union or employers' organization.

Termination of Ad-Hoc Judges

Ad-Hoc Judges are not career judges and therefore, their term of office are limited to 5 (five) years and may be reappointed for 1 (one) additional term.

In addition to such limited term of office, Ad-Hoc Judges may be honorably terminated from their offices due to:

- Death;
- Resignation;
- Prolonged disease physically or mentally, for 12 (twelve) months;
- Reaching 62 years old for Ad-Hoc judges at the industrial court and 67 years old for Ad-Hoc judges at the Supreme Court;
- No longer able to perform tasks;
- Replacement of members up on request from employer's organizations or workers'/labors' organization.
- Completion of office term.

Ad-Hoc Judges may also be terminated without honor from their office due to:

- Imprisonment for criminal action;
- Neglect his/her duties continuously for 3 (three) months without valid reason;
- Breaching oath and promise.

Monitoring of Ad-Hoc Judges

The Head of the District Court and the Head of the Supreme Court shall monitor the implementation of the duties of Ad-Hoc Judges pursuant to their authoritiy. Monitoring does not negating or reducing the freedom of Ad-Hoc Judges to examine and resolve the cases. Monitoringly is intended to make Ad-Hod Judges work more professionally, honestly and fair. In monitoring, the Head of District Court and the Head of the Supreme Court are outhorized to give warning and guidance.

No Appeal Process in the High Court

Different from civil and criminal cases, there is no appeal process to the high court in decisions made by the Industrial Court. It is intended that the Industrial Court decision will be considered as final and binding legal decision.

Appeal Process in the Supreme Court

Not all industrial relation dispute cases decided by the district court can be appealed to the Supreme Court.

The cases that can be appealed to the Supreme Court are in respect to rights disputes and employment termination disputes. Interest disputes and dispute between trade unions within one company, which are decided at the first level of the Industrial Court under the District Court, is final and binding.

Legal Proceeding

A valid legal proceeding at the Industrial Court is at similar level to civil law proceeding at the General Court, subject to modifications stipulated under the Dispute Settlement Act.

Hearings

Industrial Court hearing are open to the public, unless the judge, based on certain considerations declares the hearing to be closed.

The Industrial Court consists of one (1) person as the Head and 2 (two) Ad-Hoc judges as members. Within seven (7) days after the constitution of the panel of judges by the Head of District Court, the panel must set the date of hearing

In case plaintiff or his/her proxy fails to attend the first and second sessions, despite proper invitation, his/her claim may be deemed void by the Panel of Judges, and he/she may resubmit such claim. However, when defendant or his/her proxy fails to attend the first and second sessions, then such claim may be accepted and the Panel of Judges may give a verdict over such case based on existing evidence.

Summon for Witnesses

The Panel of Judges may summon witnesses or expert witnesses for their testimony. Anyone summoned as a witness shall be obligated to obey such summon and give his/her testimony under oath.

In addition to the summons to witnesses and expert witnesses, the panel of Judges, in order to resolve a dispute, shall be authorized to seek clarification from anyone unconditionally, including the opening of books and the submission of correspondence.

Decision Making

In making decisions, the Panel of Judges shall consider laws, existing agreements, customs and a fair sense of justice. In examining industrial relation disputes, the Panel of Judges shall not only consider formal justification but also material justification.

The panel of judges must settle industrial relation disputes within 50 (fifty) workdays after the date of the first session.

The decision of the panel of judges shall be read out in an open session. Such decision shall have a permanent legal power and effect if an appeal to the Supreme Court is not filed within 14 (fourteen) workdays.

For parties who attend the session, such of the grace period of 14 (fourteen) workdays shall be calculated after the date of the conclusion of the trial, while for those who fail to attend, it shall be calculated after the date of receipt of notice on such decision.

Request for an appeal must be submitted to the Supreme Court within 14 (fourteen) workdays after the date of receipt of appeal request by registar at the Industrial Court.

Supreme Court Level

Similar to the Panel of Judges at the Court of First Level, the Panel of Judges at Supreme Court shall consist of 1 (one) Justice and 2 (two) Ad-Hoc Judges.

The Panel of Judges must give its decision on disputes on employment termination and conflicts of interest within 30 (thirty) workdays after the date of receipt of appeal request.

CHAPTER IV

ADMINISTRATIVE AND CRIMINAL SANCTION

ADMINISTRATIVE SANCTION

Administrative sanction shall cover:

- Disciplinary action;
- Written warning;
- Temporary Revocation as Conciliator and Arbitrator;
- Permanent Revocation as Conciliator and Arbitrator.

DISCIPLINARY ACTION

To be imposed to the Mediator and Junior Committee, since both are civil government officials. Therefore, the sanction to be imposed is pursuant to the prevailing laws and regulations.

WRITTEN WARNING

To be imposed to the Conciliator and Arbitrator for the following reasons:

- The Conciliator fails to submit written recommendation fter 14 (fourteen) work days or does not help the parties in making the collective agreement after three (3) work days.
- The Arbitrator does ot resolve the industrial relation dispute within 30 (thirty) work days and during the extension period, i.e., at the latest 14 (fourteen) work days or fail to make minutes of investigation.

Temporary Revocation

Administrative sanction in the form of temporary revocation as conciliator or arbitrator can be imposed in case the concerned conciliator or arbitrator has received three (3) written warnings. Temporary revocation is valid for a maximum 3 (three) months.

Permanent Revocation

Administrative sanction in the form of permanent revocation to the conciliators and arbitrators may be imposed when:

- Conciliators have been given with 3 (three) temporary revocations and are proven to have committed a criminal action and abused their power.
- Arbitrators have made at least 3 (three) arbitration decisions which are deemed to be beyond their power and the Supreme Court has granted request for a judicial review on such decisions and they are proven to have committed criminal actions and abused their power or that the Arbitrators have been given with 3 (three) temporary revocations.

Criminal Sanction

Anyone who violates the stipulations as meant in Article 12 paragraph (1), Article 22 paragraph (1) and paragraph (3), Article 47 paragraph (1) and paragraph (3), Aricle 90 paragraph (2), Article 91 paragraph (1) and paragraph (3), shall be liable for criminal sanction of :

- Minimum 1 (one) month and maximum 6 (six) month confinemen and/or;
- A fine of minimum Rp 10,000,000 (ten million Rupiah) and maximum Rp 50,000,000 (fifty million Rupiah).