



PRACTICAL GUIDE

MANAGING INDUSTRIAL RELATIONS IN THE WORKPLACE

(Guidelines for middle level management)





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(Guidelines for middle level management)

Prepared by the cooperation of
DPN APINDO and ILO Jakarta

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Dicetak di Indonesia

FOREWORD

The Manpower Act No.13 of 2003 provides the legal basis for the industrial relations system in the company. It is important that the middle management whose normally the facilitator between the top management employers and the workers/trade union has good understanding about the laws and regulations as well as ensure good communication and relations at the workplace level. Ability to manage industrial relations can create an atmosphere of trust, promote participation and encourage consensus in enterprise level decision-making. It can result in productivity improvements for enterprises and protecting workers and rewarding them for their contributions.

In a commitment to support APINDO's capacity building in this area, the ILO-Jakarta office is assisting APINDO to strengthen its services to members on industrial relations. This support includes in organizing the workshops for the middle managers at the industrial areas, Bekasi and Tangerang in 2018. Based on such workshops, Apindo initiated to issue a practical guide on managing industrial relations at the workplace for middle management. We would like to extend our deep appreciation to Ms. Myra Hanartani, Mr. Darwoto, and Mr. Gustav E. Matulesy in APINDO who have worked very hard to develop this guide. Our appreciation also conveyed to Mr. Harijanto and Mr. Hariyadi Sukamdani for their continuous efforts and collaboration with the ILO in creating harmonious, dynamic and fair industrial relation.

The ILO-Jakarta Office wish to express the hope that these publications will be of lasting usefulness to APINDO, its members, and other interested parties for managing industrial relations at the workplace.

Jakarta, April 2019

Michiko Miyamoto

ILO Director for Indonesia and Timor Leste

FOREWORD

Pancasila Industrial Relations (IR) is a relationship system among actors in the production process of goods and/ or services which consists of employers, workers and government. IR in Indonesia, as stipulated in Law No. 13 of 2003 concerning Manpower, and is based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. APINDO as partner in IR, continues to assist, facilitate, and encourage its members to realize harmonious, dynamic, and fair labour in IR.

In 2018, DPN APINDO in collaboration with ILO Jakarta held a series of IR Workshop which was attended by the middle level management representatives of APINDO members located in industrial estates, Bekasi and Tangerang. The issues raised in the workshop was compiled into a book "Practical Guidelines for Managing Industrial Relations in the Workplace" (Guidelines for middle level management). By understanding the issues, this book is structured in such a way to be applicable in all sectors and scale of business.

We hope this book can strengthen middle management capacity in managing issues related to industrial relations at company level to create harmonious, dynamic and fair IR. We also hope by this book, APINDO member companies shall have a culture which always prioritizes dialogue with trade unions, governments and other actors in IR system. DPN APINDO would like to thank ILO Jakarta, DPK APINDO Bekasi and Tangerang and the companies that participated in this program.

Jakarta, April 2019

Hariyadi B. Sukamdani

Chairman of APINDO

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CHAPTER I. PENDAHULUAN

Based on Law No. 13 of 2003 concerning Manpower, industrial relations (IR) is a relationship system which formed among actors in the production process of goods and / or services which consist of employers, workers and government, and based on the values of Pancasila and the 1945 constitution of Republic of Indonesia.¹

Therefore, the purpose of IR is to contribute to manifest fair and prosperous society based on the following premises:

- a. The entirety precepts of Pancasila as a whole and are inseparable from one another.
- b. Employers and workers are not differentiated because of class, belief, politics, ideology, religion, ethnicity or gender.
- c. Eliminating differences and developing equality as well as disputes which arise must be resolved through deliberation to reach consensus.



To achieve this goal, all actors in the production process of goods and or services shall have the following mentality:

- a. Respect for mutual respect
- b. Understands each position and role
- c. Understand their rights and obligations in the entire production process

¹ The application of Pancasila IR was emphasized at the Declaration of IR Pancasila Revitalization on December 5, 2018 at LIPPO Cikarang, by the Director of Institutional Industrial Relations representing the Minister of Manpower.

The essence of the implementation of the precepts of Pancasila in IR is to achieve harmonious, dynamic and fair IR. The implementation of IR Pancasila in Indonesia not only based on national regulations, but also refers to international standards as stated in the International Labor Organization (ILO) conventions. There are eight fundamental ILO conventions which have been ratified by Indonesia.

CHAPTER II. BASIC PRINCIPLES IN THE WORKPLACE

The International Labour Organization (ILO) consists of representatives of employers, workers/labourers and the government that adopted all international labour standards, eight of them are the fundamental conventions. The classification to become the fundamental convention because the matters are related to fundamental principles and rights at work.

The ILO requires that each member country, even though one has not ratified the basic convention, is still obliged to submit a report on its implementation in accordance with the reporting schedule. These eight fundamental conventions are also referred as fundamental principles in the workplace. These eight basic conventions have become Indonesian law and must be a reference in managing IR.



The basic principles in the workplace are categorized into 4 (four) group, namely:

- ◆ Freedom of Association and the Right to Organise and Collective Bargaining (C87 and C98)
- ◆ Elimination of Forced Labor (C29 and C105)
- ◆ Elimination of Discrimination in job and position (C100 and C111)
- ◆ Elimination of Child Labor (C138 and C182)

| Convention | Description | Ratification | Principles | Critical Issues |
|--|--|--|---|---|
| <p>Freedom of Association (C87)</p> | <p>Convention No. 87 concerning freedom of association refers to the rights of workers and employers to form and join an organization, such as employers' associations and trade unions.</p> <p>This Convention does not apply to army and police.</p> | <p>This Convention has been ratified by Indonesia through Law No. 18 of 1956 concerning ratification of the ilo convention No. 98 regarding the enactment of the basics of the right to organize and collective bargaining. This Convention is also subsequently regulated in Presidential Decree No. 83 of 1998 concerning ratification of the ILO No. Convention. 87 concerning freedom of association and protection of the right to organize. In addition, this convention is also regulated in Law No. 21 of 2000 concerning trade unions / labor unions.</p> | <p>The main principles regarding freedom of association are:</p> <ul style="list-style-type: none"> • The right of all workers and employers to join or form organizations • The freedom of the organization to choose its own management • Protection from anti-union actions • The right of the organization to self-regulate their internal affairs • The right to form and join federations and confederations, as well as the right to be affiliated with international organizations | <ul style="list-style-type: none"> • Number of registration evidence of trade unions / labor unions • Membership (who is referred to as a member) • Management • Organizational affiliation |

| Convention | Description | Ratification | Principles | Critical Issues |
|---|---|--|--|--|
| Right to Organise and Collective Bargaining Convention (C98) | <p>This convention aims to protect the rights of workers to associate without any interference from the employer.</p> | <p>This Convention has been ratified through Law No. 18 of 1956 concerning the approval of international organizations No. 98 concerning the entry into force of the basic rights to organize and collective bargaining.</p> | <p>The main principle about the right to collective bargaining is:</p> <ul style="list-style-type: none"> • Copyright to collate work requirements collectively • Efforts to promote collective bargaining | <ul style="list-style-type: none"> • which labor unions that have the right to represent (especially if there are more than 1 trade union) • Coverage of workers regulated in collective agreements • Regulating organizational activities • Negotiations based on "goodwill" and maximum efforts to reach agreement |
| Forced Labour (C29) | <p>This convention regulates the matters concerning:</p> <ul style="list-style-type: none"> • Forced labor • Prohibition of forced labor • Eradicating all forms of forced labor <p>This convention defines forced labor as all work or service which is exacted from any person</p> | <p>This Convention has been ratified through Law No. 19 of 1999.</p> | <p>The absence of the agreement is referred as:</p> <ul style="list-style-type: none"> • Considered a slave • Psychological coercion: the threat of punishment if one doesn't do the job as instructed • Debt burdening (make up the prices soar, interest is too high) • Detention or | <ul style="list-style-type: none"> • Overtime Settings • Detention of workers' personal documents • Jobs in remote areas |

| Convention | Description | Ratification | Principles | Critical Issues |
|------------|---|--------------|--|-----------------|
| | <p>under the menace of any penalty and for which the said person has not offered himself voluntarily.</p> | | <p>not paying salary</p> <ul style="list-style-type: none"> • Detention of identity documents or other valuable / important items <p>The threat of punishment is referred as:</p> <ul style="list-style-type: none"> • Physical and sexual violence for workers and relatives • Confinement in the workplace • Financial punishment • Transfer of rights • Drastic reduction in food, shelter or other needs • Exile from community and social life • The threat of complaints to the police or the threat of repatriation | |

| Convention | Description | Ratification | Principles | Critical Issues |
|---|---|--|--|---|
| <p>Abolition of Forced Labour (C105)</p> | <p>This Convention sets out effective measures to eliminate any form of compulsory/ forced labour:</p> <ul style="list-style-type: none"> • Political/ educational coercion or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; • as a method of mobilising and using labour for purposes of economic development; • as a means of labour discipline; • as a punishment for having participated in strikes; • as a means of | <p>This Convention has been ratified through Law No. 19 of 1999.</p> | <p>the term forced or compulsory labour shall not include--</p> <ul style="list-style-type: none"> • any work or service exacted in virtue of compulsory military service laws for work of a purely military character; • any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; • any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private | <ul style="list-style-type: none"> • Overtime Settings • Detention of workers' personal documents • Jobs in remote areas |

| Convention | Description | Ratification | Principles | Critical Issues |
|------------|--|--------------|--|-----------------|
| | <p>racial, social, national or religious discrimination.</p> | | <p>individuals, companies or associations;</p> <ul style="list-style-type: none"> • any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; • minor communal services of a kind which, being performed by the members of the community in the direct interest of | |

| Convention | Description | Ratification | Principles | Critical Issues |
|---|--|--|---|---|
| | | | <p>the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.</p> | |
| <p>Equal Remuneration (C100)</p> | <p>This convention regulates equal remuneration for male and female workers for work of equal value.</p> | <p>This Convention has been ratified through Law No. 80 of 1957 concerning the Approval of the International Labor Organization Convention No: 100 concerning Wages for Male and Female Workers for Work of Equal Value (State Gazette No: 171 of 1957).</p> | <p>This Convention describes the equal or identical work, or work in the equal or identical condition. For examples: male and female professors who teach at a university.</p> <p>This convention also describes work which have the equal values/ equal or identical condition (similar work).</p> | <ul style="list-style-type: none"> • Social construction of men and women • Affirmative action • Sexual Harassment |

| Convention | Description | Ratification | Principles | Critical Issues |
|---|---|--|---|---|
| <p>Discrimination in Respect of Employment and Occupation (C111)</p> | <p>This convention defines discrimination as having 3 components, namely causes, facts and impacts.</p> | <p>This Convention has been ratified through Law No. 21 of 1999.</p> | <p>In the causal component, it is explained that discrimination is prohibited on the basis of:</p> <ul style="list-style-type: none"> • Gender • Race • Color • Religion • Social Origin • National extraction • Political opinion <p>Then in the component of facts it is explained that discrimination has elements such as:</p> <ul style="list-style-type: none"> • impairing equality of treatment • impairing equality of opportunity • Given Preference. <p>Meanwhile, related to the impact component, it was explained that discrimination would result in unfair work outcomes.</p> | <ul style="list-style-type: none"> • Social construction of men and women • Affirmative action • Sexual Harassment • Gender pay gap • Women workers' rights: such as maternity leave, breast-feeding, etc. |

| Convention | Description | Ratification | Principles | Critical Issues |
|---------------------------|--|---|---|---|
| Minimum Age (C138) | <p>This Convention requires member countries to pursue national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.</p> | <p>This Convention has been ratified through Law No. 20 of 1999 concerning the ratification of the ILO convention No. 138 concerning minimum age for admission to employment.</p> <p>In addition, there are several supporting legal instruments, namely:</p> <ul style="list-style-type: none"> • Law No. 2/1989 concerning National Education. • Law No. 1/1974 concerning Marriage. • Law No. 23/1992. • Act concerning Population in 1992. • Presidential Decree No. | <p>This Convention explains the Minimum Age for admission to employment or work:</p> <ul style="list-style-type: none"> • The minimum age for admission to employment shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. Additionally, for light work, it may permit the employment or work of persons 13 to 15 years of age. Meanwhile, for hazardous work, the minimum age is 18 years or 16 years with certain strict requirements. • If there is a situation where the economy and educational facilities are insufficiently developed may, after consultation | <ul style="list-style-type: none"> • Children who work in the household • Children who work helping their parents |

| Convention | Description | Ratification | Principles | Critical Issues |
|------------|-------------|---|--|-----------------|
| | | <p>44/1984 concerning National Children's Day.</p> <ul style="list-style-type: none"> • Presidential Decree No. 36/1990 concerning the Convention on the Rights of the Child. • Presidential Instruction No. 2/1989 concerning Welfare for children. • Law No. 3/1997 concerning Justice for children. • Ministerial Decree No. 1/1997 concerning the protection of working children. • Presidential Instruction No. 3/1997 concerning the development of the quality of children. | <p>with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years. while for light work, the minimum age is 12 years, while for hazardous jobs the minimum age is 18 years or 16 years with certain strict requirements.</p> <p>These provisions apply to all sectors of the economy, all child workers whether they are employed or work independently.</p> | |

| Convention | Description | Ratification | Principles | Critical Issues |
|---|--|---|--|---|
| | | <ul style="list-style-type: none"> Minister of Home Affairs Instruction No. 3/1997 and Coordinating Ministry for Human Development and Cultural Affairs Decree No. 4/1997 concerning the Decade of Children 1996-2006. | | |
| Worst Forms of Child Labour (C182) | <p>The Convention requires member countries to take immediate and effective action to secure prohibitions and the elimination of the worst forms of child labor as a matter of urgency</p> | <p>This Convention has been ratified through Law No. 1 year 2000 concerning the ratification of the ILO convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour</p> | <p>According to this Convention, the Worst Form of Child Labor is:</p> <p>1. The absolute worst form of child labor:</p> <p>all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in</p> | <ul style="list-style-type: none"> Children who work in the household Children who work helping their parents |

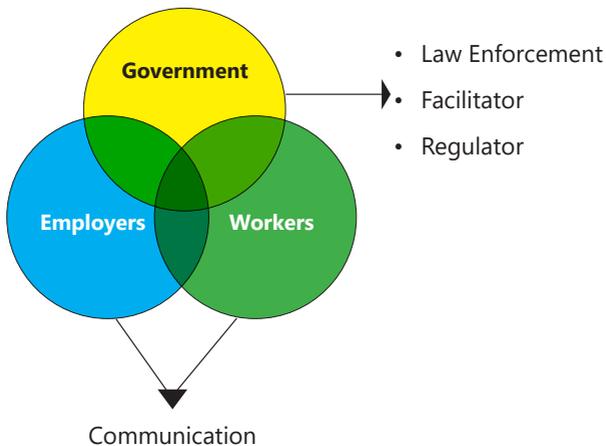
| Convention | Description | Ratification | Principles | Critical Issues |
|------------|-------------|--------------|--|-----------------|
| | | | <p>armed conflict;</p> <ul style="list-style-type: none"> • the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; • the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; • work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. <p>2. Hazardous work:</p> <p>Work which due to the nature or environment in which the work is carried out,</p> | |

| Convention | Description | Ratification | Principles | Critical Issues |
|------------|-------------|--------------|---|-----------------|
| | | | <p>will endanger the health, safety and morals of the child and the types of hazardous work set by the national authority:</p> <ul style="list-style-type: none"> • children are exposed to physical, psychological and sexual violence • underground work, under water, at dangerous heights, and / or in a closed room • There are dangerous machines or lifting heavy loads manually. • An environment that exposes children to health hazards • Specific dangerous conditions (e.g. long working hours) or where freedom to move (come and go) is limited. | |

CHAPTER III. BUILDING CONSTRUCTIVE INDUSTRIAL RELATIONS

1. The Construction Of Industrial Relations

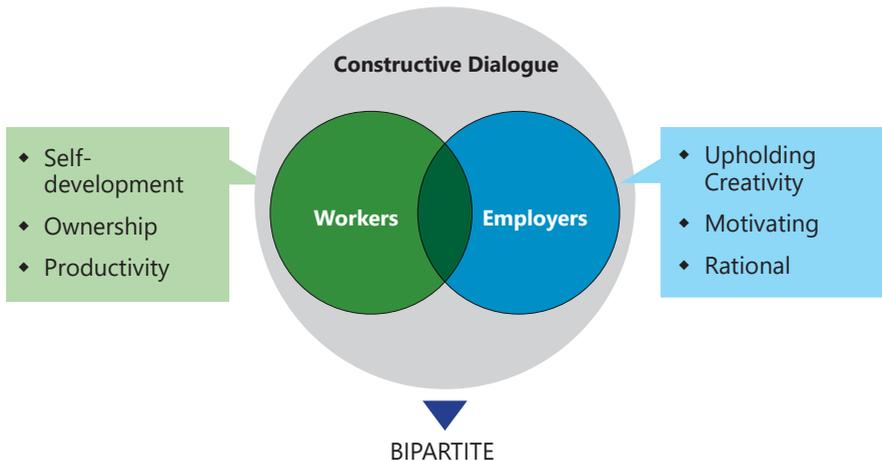
The following diagram shows the ideal model of stakeholder relationships in building ideal Industrial Relations



The above diagram shows there is always an intersection of interests between the actors of the production process. The country needs strong entrepreneurs and productive workers. Employers need legal certainty which allow businesses to grow optimally while workers need employment, decent wages and social protection in carrying out their jobs. Because of the intersecting interests, each element has a role in industrial relations. The government acts as a regulator and law enforcer, while workers and employers play a role in accordance with the objectives of the organization.

2. Constructive Dialogue

Building harmonious, dynamic and equitable industrial relations starts at the company level, therefore effective dialogue between employers and workers is one of the main requirements in achieving it. To raise the constructive dialogue culture at the enterprise, it will need mutual trust which process needs time, good will and attitude, and sufficient competencies of the parties.



The purpose of Dialogue at the Company level

- a) Build mutual trust
- b) Building mutual engagement
- c) Understanding the same vision in the company
- d) Getting to know Indonesian culture for expatriates
- e) Getting to know the culture of the investors
- f) Understanding and implementing existing regulations

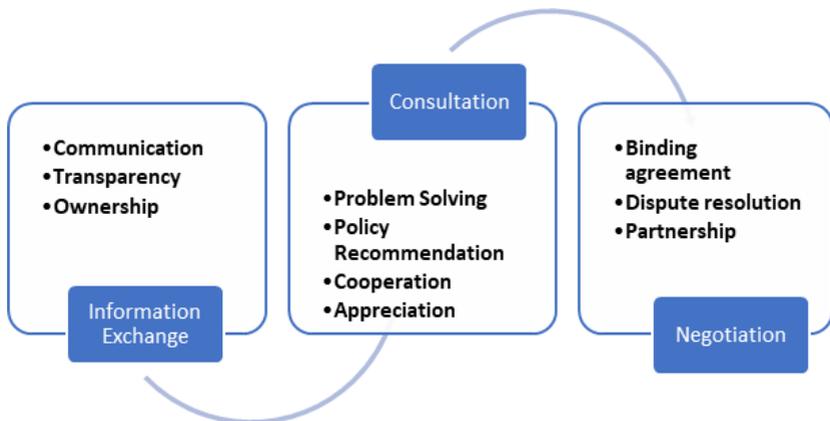
Social dialogue does not mean end of differences between management and workers representatives but willingness to overcome them through discussions and compromises.

3. Cooperation in the Workplace: Dialogue (Social)

ILO Recommendation No. 94 concerning Consultation and Co-operation at Workplace provides guidance on cooperation in the workplace which has the following elements:

- ◆ As a forum for communication and cooperation
- ◆ The collaboration focuses on the matters of mutual concern
- ◆ Collaboration stipulated in this recommendation is cooperation outside the collective labour agreement negotiations

This collaboration starts with the exchange of information that results in negotiations. As shown in the picture below.



Communication is critical to the success of group endeavor. Sharing information among coworker and management would create transparency and clear understanding about division of works. This will engage the worker to feel the ownership on what they are doing with the division and aware where they stand in relation to their final goal. The communication will also increase feelings of solidarity as everyone begins to develop similar ideas about where their team is headed. The collaboration should also offer consultation such as problem

solving, policy recommendation, cooperation and appreciation. Finally, the collaboration should also address the negotiation process such as binding agreement, disputes resolution and partnership.

Effective social dialogue for workplace cooperation requires building joint understanding & agreement on:

- the present situation, its strengths & weaknesses
- the objectives of social dialogue
- two-way communication, information sharing, and genuine consultation and participation
- how such social dialogue will relate to collective bargaining



Cooperation in the workplace ultimately aims to improve work productivity and the welfare of workers. This trait is necessarily to improve the workplace in positive ways and perform to its full potential. Collective bargaining and fair dispute resolution will maximize the sustainability, business development and worker welfare and minimize their weaknesses, leading to a workplace that is efficient, dynamic and productive. Thus,

the combination of these aspects is a central factor of effective teamwork. This will lead to an effective function of business and improving the creative interaction of people cooperating together. Individuals can learn from each other, consult with each other about problems and come to agreements about the best ways to reach goals.

CHAPTER IV. HANDLING LABOUR DISPUTES AT THE COMPANY

The spirit of industrial relations of Pancasila basically emphasizes the need for dialogue and as far as possible avoids disputes in the workplace which will ultimately harm both parties. However, it cannot be denied that at some point, differences of opinion or disputes between workers and management cannot be avoided.

Furthermore, to deal with industrial relations disputes in the right manner, management must develop jointly with workers representatives' procedure and steps for grievance handling and addressing disputes at work place. It is also important that Management designate appropriate officers or personnel who qualify for handling the grievances and disputes.

1. Technical requirements for personnel to be mastered.

- a. Numerous rule and regulation related to the rights and obligations of workers and employers, especially Law No. 13 of 2003 concerning Manpower, Law No. 21 of 2000 concerning Trade Unions/ Labour Unions and Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes Law No. 13 of 2003.
- b. Numerous implementing regulations of the above laws
- c. Company regulations
- d. Collective Labour Agreement at the company.
- e. Internal provisions in the company issued by management.

2. The work attitude required

- a. Possesses self-confident to face negotiating partners
- b. Although based on labour regulation the personnel have the status of a worker, he/ she must realize that he/ she is part of management. This means that he/ she must be able to think as an employer.

- c. Understand the character of workers who are in trouble.
- d. Have good persuasion and negotiation skills.
- e. Acting as an effective bridge between companies and workers.

3. Dispute resolution

Labour law is an administrative law, so to ease the handling cases complete documentation must be available.

This complete documentation began from documentation in the negotiations at the bipartite level, until the settlement at the Mediation session, and the trial at the Industrial Relations Court (PHI).



a. At the Bipartite level, documents needed are:

- ◆ Summons letter that meets the requirements
- ◆ Attendance list of both parties.
- ◆ Minutes of meetings.
- ◆ Minutes of Bipartite negotiations.

b. Joint Agreement

The bipartite meeting which results an agreement is stated in the document of Collective Agreement (PB) signed by both parties with sufficient stamp duty. The PB must be registered with the local PHI.

c. At the Mediation level, documents needed are:

- ◆ Letter to the responsible institution for manpower in the local district / city which contains requests for mediation.
- ◆ Compile a written chronology of the event which will be mediated and must contain the Company's standpoint towards the case.

- ♦ Chronological documents are attached to the documents in bipartite meetings such as: attendance list and minutes of bipartite meetings.

d. Mediator Advice:

At the end, as a result of the mediation session, the Mediator will make advices to both disputed parties.

Should the company cannot accept the advice, the company must file a lawsuit with the Industrial Relations Court (PHI) which covers the jurisdiction in where the employee works.

e. The lawsuit to PHI

- ♦ File a lawsuit and register the dispute to the local PHI.
- ♦ Attach Minutes of Bipartite Session, Mediation session, and Mediator Advices

4. Trial at PHI

Stages:

- ♦ Filing the lawsuit.
- ♦ Answers from the defendant.
- ♦ Replication from the Plaintiff.
- ♦ Duplicate from the defendant.
- ♦ Submission of evidence from the plaintiff and the defendant.
- ♦ Calling witnesses from the plaintiff and defendant.
- ♦ Conclusions from the plaintiff and defendant.
- ♦ Court ruling

5. Cassation efforts

- ♦ Minutes for filing an appeal must be registered with the local PHI within a period of 14 (fourteen) days after the company has received the decision.

- ♦ Setting up the memory of cassation.
- ♦ Convey Memory of Cassation to the local PHI to be submitted to the Supreme Court.

6. Judicial Review (PK).

- ♦ Minutes of PK is registered with the local PHI within 14 (fourteen) days after receiving the Supreme Court decision.
- ♦ Arranging memory of PK.
- ♦ Convey memory of PK to the local PHI court within a time limit of 90 (ninety) days after the registration of PK.
- ♦ To file a PK, there must be a new evidence (Novum)

Note: since 1 January 2019, PK has been abolished based on the Supreme Court Circular Letter No. 32 dated November 16, 2018

Lastly, it's important to note that Indonesian labour laws requires that the first place where disputes should be tried to be solved are at bi-partite level. It is therefore important that company establishes effective dispute prevention & resolution procedures.

Further ILO recommendation on the Examination of Grievances Recommendation, 1967 (No. 130) encourages establishment of a grievance procedure at the level of the enterprise as a first step before resorting to other procedures outside the company.