

# FACTORS INHIBITING MEDIATION AND THE IMPACT OF NON-IMPLEMENTATION OF MEDIATORS' RECOMMENDATIONS IN RESOLVING INDUSTRIAL RELATIONS DISPUTES

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## *Abstract*

*Mediation serves as a peaceful mechanism used by workers and employers when bipartite negotiations fail to produce agreement. Its core purpose is to reconcile disputing parties through the involvement of a neutral mediator who acts impartially to help achieve fair and balanced outcomes. Mediators authorized to assist in industrial relations disputes operate within official labor institutions, including the Riau Provincial Manpower and Transmigration Office. This study seeks to identify the inhibiting factors that hinder the effectiveness of mediation in resolving industrial relations disputes handled by the Riau Provincial Manpower and Transmigration Office, as well as to analyze the consequences that arise when mediator recommendations are not implemented by workers or employers.*

*The research applies a sociological legal approach, characterized by direct observation and data collection through interviews at designated research locations. This approach enables the study to present descriptive findings that provide a clear and structured understanding of the central issues affecting the mediation process.*

*The findings indicate that the primary obstacle in resolving disputes through mediation lies in the weak cooperation between workers and employers. High levels of ego and unwillingness to compromise from both sides impede the creation of mutually acceptable solutions, resulting in unsatisfactory mediation services. Furthermore, the failure to act upon mediator recommendations specifically those issued by the Riau Provincial Manpower and Transmigration Office leads to prolonged disputes between the parties. Such unresolved disagreements often escalate to the industrial court, which ultimately requires additional time, greater financial resources, and extended conflict for both workers and employers.*

**Keywords:** *Mediation, Inhibiting Factors, Impact of Recommendations.*

## **Abstract**

Mediasi merupakan salah satu mekanisme penyelesaian damai yang diterapkan ketika upaya bipartit atau negosiasi antara pekerja dan pengusaha tidak membuahkan hasil. Tujuan utama mediasi adalah mencapai kesepakatan yang adil dengan menghadirkan mediator sebagai pihak ketiga yang netral. Mediator yang berwenang menangani perselisihan hubungan industrial umumnya berasal dari instansi yang memiliki otoritas di bidang ketenagakerjaan, salah satunya Dinas Tenaga Kerja dan Transmigrasi Provinsi Riau. Penelitian ini difokuskan untuk mengidentifikasi faktor-faktor penghambat dalam proses mediasi, serta menelaah dampak dari tidak dilaksanakannya anjuran mediator dalam penyelesaian sengketa hubungan industrial.

Jenis penelitian yang digunakan adalah penelitian hukum sosiologis, dengan pendekatan observasi langsung ke lokasi penelitian. Pengumpulan data dilakukan melalui wawancara sebagai instrumen utama, sedangkan sifat penelitian bersifat deskriptif, bertujuan memberikan gambaran yang jelas dan rinci mengenai permasalahan pokok yang diteliti.

Hasil penelitian mengungkap bahwa salah satu hambatan utama dalam mediasi adalah kurangnya kerja sama antara pihak pekerja dan pengusaha. Tingginya ego masing-masing pihak menyebabkan mediasi gagal menghasilkan kesepakatan yang memuaskan kedua belah pihak. Selain itu, penelitian ini menemukan bahwa ketidakpatuhan terhadap anjuran mediator berdampak signifikan terhadap penyelesaian perselisihan. Ketika anjuran mediator dari Dinas Tenaga Kerja dan Transmigrasi Provinsi Riau tidak diindahkan, perselisihan antara pekerja dan pengusaha cenderung berlanjut ke jalur Pengadilan Hubungan Industrial. Proses litigasi ini menimbulkan kerugian tambahan bagi kedua pihak, karena membutuhkan waktu yang lebih lama dan biaya yang lebih tinggi dibandingkan penyelesaian melalui mediasi.

**Kata Kunci:** Mediasi, Faktor Penghambat, Anjuran Mediator, Dampak dari Litigasi

## INTRODUCTION

Employment agreements are the basis for the birth of employment relationships between employers and workers/laborers. This agreement can be made orally or in writing, provided that it is agreed by both parties. The agreement lists the rights and obligations of each party, because without these provisions, both parties can act as they please. The main purpose of making a work agreement is in line with the legal purpose, which is to provide protection and ensure justice for all parties involved.<sup>1</sup>

In the scope of employment, a person should not be enslaved, because workers and employers are the same. But in reality, workers are not in the same position as employers, there are times when they are forced to accept a job that burdens them, it is because workers/laborers only have capital and they need the job.<sup>2</sup> The relationship between workers and employers does not always run smoothly. In the implementation of work, differences of opinion often arise, and not all opinions

of workers and employers are in line. This disagreement has the potential to cause a dispute or dispute between the two parties.

Article 1 number 1 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes explains that industrial relations disputes are differences of opinion that cause conflicts between employers or associations of employers and workers/laborers or labor unions/labor unions. This form of conflict can be in the form of rights disputes, conflicts of interest, termination of employment disputes, or disputes between trade unions/labor unions in one company. Thus, termination disputes, rights disputes, conflicts of interest, and disputes between trade unions/laborers are included in the scope of industrial relations disputes.

This kind of dispute will affect the comfort of employers in managing their business and the productivity of workers in carrying out their work. The level of comfort and smooth operation

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<sup>1</sup>Niru Anita Sinaga, *The Role of Employment Agreements in Realizing the Enforcement of the Rights and Obligations of the Parties in Employment Relations*, Aerospace Law Scientific Journal, Vol 7 No.2, 2017

<sup>2</sup> Zaeni Asyhadie, *Labor Law: Indonesian Labor Law in the Field of Labor Relations*, PT RajaGrafindo Persada, Jakarta, 2015

can only be realized if both parties understand each other's rights and obligations.

Misunderstandings and conflicts that occur not only cause tension, but can also interfere with the continuity of business activities and work productivity. As a result, both parties, both entrepreneurs and workers, will suffer real losses due to the disruption of the balance of industrial relations and the smooth operation of the company.<sup>3</sup>

If the dispute between workers/laborers and employers has gone through a bipartite negotiation process but has not reached an agreement, then both parties can carry out tripartite negotiations, one of which is mediation. Mediation is an alternative dispute resolution that is simple, the parties have the freedom to determine and influence the course of the process and its outcome through a consensus mechanism or mutual agreement with the help of a neutral party called a mediator.<sup>4</sup> Mediators who play a role in resolving industrial relations disputes are mediators who come from official agencies that have authority in the field of employment, one of which is a mediator from the Riau Provincial Manpower and Transmigration Office.

Based on Article 61 paragraph (1) letter b of Law Number 13 of 2003 concerning Manpower, the employment relationship was declared to end on July 27, 2020. However, the worker, Fz, argued that his work was still ongoing because the applicable employment

agreement was supposed to end on April 30, 2021 and there were no Force Majeure conditions that justified unilateral termination. On this basis, Fz demands the payment of compensation in accordance with Article 62 of Law Number 13 of 2003, if one of the parties terminates the employment relationship before the end of the agreement period or is not in accordance with the provisions of Article 61 paragraph (1), the party who makes the termination is obliged to pay compensation in the form of wages until the end of the validity period of the agreement.

This case shows that there is a difference in interpretation between workers and employers regarding the rights and obligations in a fixed-time employment agreement, which directly affects the effectiveness of the mediation process. This situation emphasizes the important role of the mediator in providing objective direction, while also showing a significant impact if the mediator's recommendations are not heeded by the relevant parties.

Based on these conditions, this study is interested in exploring the factors that hinder the course of mediation and the impact of the non-implementation of the mediator's recommendations in resolving industrial relations disputes. The focus of the research is directed at a critical analysis of mediation practices, the level of compliance of the parties concerned with the mediator's recommendations, and the legal implications arising from

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<sup>3</sup> Lidia Febrianti, *Implementation of Workers' Wages According to Law Number 13 of 2003 concerning Manpower*, UIR Law Review, Vol 01, No 01, 201711111111

<sup>4</sup> Puspitasari Gustami and Devi Siti Hamzah Marpaung, *Comparison of the Dispute Resolution Process through Mediation in Court and Out of Court in Indonesia*, Rawang Rencang: Lex Generalis Legal Journal, Vol 5, No. 4, 2024,111111

the implementation or disregard of such recommendations.

Against this background, the study is entitled: "Factors Inhibiting Mediation and the Impact of Non-Implementation of Mediators' Recommendations in Industrial Relations Dispute Resolution", which aims to provide an in-depth understanding of the obstacles in mediation and the legal consequences that arise from non-compliance with the mediator's directives.

Industrial relations dispute cases handled through mediation are not limited to Fz and PT. YES. In 2022, Ahmad Julkipli and Imam Budi Santoso examined the role of mediators in efforts to resolve industrial relations disputes through the mediation process. The results of the study show that mediators have an important role, namely fostering industrial relations, encouraging the improvement of the quality of relations between workers and employers, and playing a role in resolving disputes that occur through non-litigation channels, outside the court.<sup>5</sup> In 2024, Reny Okprianti et al. conducted research on employment mediation, a case study of PT. Freeport Indonesia, in the study, showed that mediation has proven to be an effective settlement method. The disputing parties can voluntarily reach an agreement through mediation.<sup>6</sup> In 2025, Ni wayan seniasih et al researched the settlement of labor disputes in the hotel industry through arbitration and

mediation, the settlement mechanism through mediation and arbitration has great potential in preventing the escalation of conflicts that can harm the parties, but its effectiveness depends on legal understanding, partiality of social dialogue, and the commitment of the parties to resolve disputes through arbitration and mediation.<sup>7</sup>

The purpose of this study is to find out the inhibiting factors in the mediation of industrial relations between workers and employers and the impact if the mediator's recommendations are not implemented by the disputing parties.

## **PROBLEM FORMULATION**

1. What are the factors that are the causes and obstacles in the process of resolving industrial relations disputes through mediation between Fz workers and employers?
2. What is the impact of the non-implementation of the mediator's recommendations in resolving Industrial Relations disputes between workers and employers?

## **RESEARCH METHODS**

This study uses a Sociological Legal Research approach or empirical research, focusing on direct observation at a predetermined research site. The research combines two methods, namely the legislative method to examine positive legal regulations, especially Law Number 2 of 2004 concerning the Settlement of Industrial Relations

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<sup>5</sup> Ahmad Julkipli and Imam Budi Santoso, *The Role of Mediators in Efforts to Resolve Industrial Relations Disputes Through Mediation*, Journal of Justitia Vol 5 No. 2, 2022

<sup>6</sup> Reny Okprianti et al., *Mediation in Labor Disputes: A Case Study of PT. FREEPORT INDONESIA*, Legal Journal "THE JURIS" Vol. VIII, No. 2, 2024

<sup>7</sup> Ni Wayan Seniasih et al, *Labor Dispute Resolution in the Hospitality Industry Through Arbitration and Mediation*.

Disputes, and the case study method to analyze the termination of employment disputes between Fz workers and employers.

Research data sources are divided into two categories. First, primary data, which is obtained directly from related parties, such as workers and employers, to ensure accurate and authentic information. Second, secondary data, obtained from literature, official documents, and other relevant literature materials, to strengthen the analysis and provide a comprehensive theoretical foundation.

This research is located at the Riau Provincial Manpower and Transmigration Office, as an official institution that handles the settlement of industrial relations disputes between workers and employers. The selection of this location allows direct observation of the course of mediation, interaction of the parties, and the implementation of the mediator's recommendations in handling conflicts.

The main data collection technique is interviews, conducted directly to the parties involved in the dispute. This interview aims to explore in depth the inhibiting factors in the mediation process as well as the impact of non-compliance with the mediator's recommendations. In this way, researchers can capture the real context and experiences of the parties that are not always recorded in official documents.

Once the data is collected, the analysis is carried out qualitatively, without relying on numbers or statistics. The data from the interviews were processed into narrative descriptions, then analyzed by comparing field

findings with legal theories, laws and regulations, and expert opinions. This approach allows the research to present a comprehensive picture of the mediation mechanism, the obstacles that arise, and the legal implications of implementing or ignoring the mediator's recommendations in the settlement of industrial relations disputes.

## **RESULTS OF RESEARCH AND DISCUSSION**

### **A. Inhibiting Factors in Resolving Industrial Relations Disputes Through Mediation**

The employment relationship is formed from an agreement agreed upon by both parties, namely employers and workers/laborers. Based on Article 1 number 16 of Law Number 13 of 2003 concerning Manpower, an employment relationship is a relationship between an employer and a worker/laborer based on a work agreement, which includes the main elements in the form of work, wages, and orders.

In "Article 1601a of the Civil Code, an employment agreement is an agreement in which one party, the worker, binds himself to be under the orders of the other party, the employer for a certain time, to do work by receiving wages". "Article 1320 of the Civil Code contains the conditions for a The agreement can be said to be valid where the conditions are as follows:

- a. Agree with those who bind him;
- b. Ability to make an alliance;
- c. A certain thing;
- d. A halal cause".

If the employment agreement made by the parties does not meet conditions 1 and 2 above, the agreement can be canceled, but if the parties do not meet

conditions 3 and 4, then the employment agreement is null and void.<sup>8</sup>

Employment agreements can be made in written or oral form, In "Article 54 of Law Number 13 of 2003 concerning Manpower, it states that employment agreements made in writing at least contain:

- a. Name, company address, and type of business;
- b. Name, gender, age, and address of the worker/laborer;
- c. Job title or type of job;
- d. Place of employment;
- e. The amount of wages and the method of payment;
- f. Work conditions that contain the rights and obligations of employers and workers/laborers;
- g. The start and duration of the employment agreement;
- h. Place and date the employment agreement was made; and
- i. Signatures of the parties to the employment agreement."

Based on interviews with the worker, the agreement made between him and the employer is a work agreement in written form.

Industrial relations not only involve interaction between workers or laborers and employers, but also involve the role of the government in regulating them. In accordance with Article 1 number 16 of Law Number 13 of 2003 concerning Manpower, industrial relations are a system of relationships formed in the process of production of goods and/or services, involving entrepreneurs, workers/laborers, and the government, which is based on the

values of Pancasila and the Constitution of the Republic of Indonesia in 1945. An industrial relationship is said to have failed if a dispute arises in it. This dispute occurs when one party feels aggrieved by the other, then expresses dissatisfaction or objection, thus causing a difference of opinion between the two parties. This kind of situation reflects an imbalance in the employment relationship and marks the presence of a conflict that requires resolution through legal mechanisms or mediation.

Basically, industrial relations disputes can be divided into two parts, namely:<sup>9</sup>

1. Industrial relations disputes by nature
  - a. **A collective dispute** is a conflict that occurs between an employer or employer and a trade union, which arises due to a misunderstanding of employment relations, terms or conditions of employment, and employment conditions in general
  - b. Individual disputes are conflicts that occur between workers who are not members of a trade union and employers, usually related to individual rights, obligations, or working conditions that are not covered by collective bargaining.
2. Industrial Relations Disputes by Type
  - a. Disputes of Rights
  - b. Conflict of interest

Article 1 number 1 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes explains that industrial relations disputes are differences of opinion that cause conflicts between employers and workers or labor

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<sup>8</sup> Lidia Febrianti, dkk, *Loc.cit.*

<sup>9</sup> M. Thaib and Ramon Nofrial, *Industrial Relations Dispute Resolution*, Deepublish, Yogyakarta, 2019

unions, which can arise from disputes of rights, conflicts of interest, disputes related to termination of employment, or disputes between labor unions within one company.

Based on Law No. 2 of 2004 above, industrial relations disputes are divided into 4 types, namely:

### **1. Disputes of Rights**

A dispute of rights occurs when one of the parties, both workers and employers, does not fulfill the rights that have been stipulated in the employment agreement, laws and regulations, company regulations, or collective bargaining agreements. This condition indicates non-compliance with legal and contractual obligations, which can lead to dissatisfaction and conflicts in employment relationships.

Meanwhile, a conflict of interest arises when workers and employers have different interests in the process of drafting or changing the conditions listed in the employment agreement, collective bargaining agreement, or company regulations at PT. THE.

### **2. Layoff disputes**

This dispute arises when one of the parties terminates an employment relationship that is considered unnatural or inappropriate by the other party, causing dissatisfaction and conflict between the two parties. This situation usually reflects different perceptions of rights and obligations in employment relationships and demands settlement through legal mechanisms or mediation.

Basically, termination of employment can be divided into 4 types, namely:

1. **Legal termination** occurs when the employment relationship ends automatically without any

special legal action from the worker or employer. In civil law, there are two forms of termination of employment for the sake of law, namely the expiration of the period stated in a certain employment agreement and the death of the worker. In this case, the employer is not required to obtain an official determination from the competent institution regarding the termination of employment. In addition, Article 61 of Law Number 13 of 2003 also stipulates that the employment relationship legally ends when the employment agreement that has been agreed upon by both parties reaches its expiration date. because:

- a. The worker died.
  - b. The term of the employment agreement has expired.
  - c. There is a court decision or determination from an industrial relations dispute settlement institution that has permanent legal force.
  - d. The occurrence of certain conditions or events listed in the employment agreement, company regulations, or collective bargaining agreement, which may result in the termination of the employment relationship.
2. If one of the parties terminates the employment relationship without complying with the provisions of Article 61 of Law Number 13 of 2003, then in accordance with Article 62 of the Law, the party who terminates the termination is

obliged to provide compensation to the other party in the form of wages until the end of the employment agreement period. This provision aims to protect workers' rights while providing legal certainty in the implementation of employment relations.

3. Termination of employment by workers, namely the termination of employment relations due to the wishes of the worker. It is regulated in:

- Workers/laborers who resign of their own volition are regulated in Article 162 of Law Number 13 of 2003. In this condition, workers are entitled to receive compensation in accordance with the provisions of Article 156 paragraph (4) of Law No. 13 of 2003, as well as the right to receive separation money. The amount and implementation of the payment are determined through an employment agreement, collective bargaining agreement, or company regulation.
- Entrepreneurs commit violations or crimes as stated in Article 169 of Law No. 13 of 2003. In this case, the worker is entitled to receive severance pay 2 times the provisions of Article 156 paragraph (2), receive service

award money 1 time the provisions of Article 156 paragraph (3), and receive compensation in accordance with the provisions of Article 156 paragraph (4).

4. Termination of employment by an employer occurs when a company takes steps to terminate an employment relationship. However, before making a decision, entrepreneurs must first make maximum efforts to prevent the termination from occurring. If termination is still unavoidable despite various efforts, then the employer must first negotiate with the workers to reach an agreement or fair solution. This is done so that later there will be no disputes between the two parties.

What is meant by entrepreneurs in this case is:

- Companies that already have the status of legal entities.
- Companies that are not yet or are not incorporated.
- A company owned by a federation.
- Government or state-owned companies.
- Business entities engaged in the social sector.
- Another form of business that provides wages or rewards to workers.<sup>10</sup>

Termination of employment by an employer can occur due to the following things:

- a. If the worker violates the employment agreement,

<sup>10</sup> Danang Sunyoto, *Juklak PHK: Guidelines for the Implementation of Termination of Employment*, Pustaka Yustisia, Yogyakarta, 2014, p. 75.



- company regulations, or collective bargaining agreement in accordance with Article 161 of Law Number 13 of 2003, the worker is still entitled to receive severance pay in the amount of one time provided in Article 156 paragraph (2), the service period award in the amount of one time in accordance with the provisions of Article 156 paragraph (3), and compensation in accordance with the provisions of Article 156 paragraph (4).
- b. Workers/laborers commit serious violations or mistakes, as stated in Article 158 of Law No. 13 of 2003
  - c. If the worker or laborer is involved in a criminal act as stipulated in Article 160 paragraph (3) of Law Number 13 of 2003, the worker is still entitled to receive a one-time service award and compensation in accordance with the provisions of Article 160 paragraph (7).
  - d. Termination of employment can arise due to a change in company status and is divided into two possibilities. First, if the company experiences a change in status, merger, merger, or change of ownership and the employee chooses not to continue the employment relationship, then the worker is entitled to severance pay in the amount of one time provided in Article 156 paragraph (2), a one-time service award money in accordance with Article 156 paragraph (3), and compensation in accordance with Article 156 paragraph (4), as stated in Article 163 paragraph (1) of Law No. 13 of 2003. Second, if a change in status, merger, or merger of a company occurs but the employer is not willing to accept workers in the new company, the worker is entitled to receive severance pay twice in accordance with the provisions of Article 156 paragraph (2), one-time service award money in accordance with Article 156 paragraph (3), and reimbursement money in accordance with Article 156 paragraph (4), as stipulated in Article 163 paragraph (2) of Law No. 13 of 2003.
  - e. Termination of employment can occur as a result of the closure of the company and is divided into two possibilities. First, if the company suffers continuous losses for two years or is closed due to force majeure, the employee is entitled to severance pay in the amount of one time provided in Article 156 paragraph (2), a one-time service award in accordance with Article 156 paragraph (3), and compensation in accordance with Article 156 paragraph (4), as stated in Article 164 paragraph (2) of Law No. 13 of 2003. Second, if the closure of the company is not due to consecutive losses for two

years or not due to force majeure, the employee is entitled to receive severance pay twice as provided in Article 156 paragraph (2), one-time service award money in accordance with Article 156 paragraph (3), and compensation in accordance with Article 156 paragraph (4), as stipulated in Article 164 paragraph (3) of Law No. 13 of 2003.

- f. If the company is declared bankrupt, the employee is entitled to receive severance pay in the amount of one time provided for in Article 156 paragraph (2), a one-time service period award in accordance with Article 156 paragraph (3), and compensation in accordance with Article 156 paragraph (4), as stipulated in Article 165 paragraph (1) of Law Number 13 of 2003.
- g. The worker/laborer is absent from work for five or more consecutive working days, as stated in Article 168 paragraph (1) of Law No. 13 of 2003. In this case, the worker is entitled to receive compensation and is given a separation fee whose implementation and amount are in accordance with the employment agreement, collective bargaining agreement, or company

regulations as stated in Article 168 paragraph (3).

4. Termination of employment can occur due to a court decision, where the employment relationship ends as a consequence of a dispute between the employer and the employee that is continued through the judicial process.<sup>11</sup>

#### **4. Disputes Between Trade Unions/Trade Unions in One Company**

The dispute between Fz and PT. Surveyor Indonesia (PT. SI) Pekanbaru Branch is categorized as a dispute due to termination of employment. This problem arose when the worker received a termination letter from brother Y, which stated that PT. CPI Indonesia as the user party has reduced its workforce, and PT. SI Pekanbaru Branch determined that the employment relationship ended on July 27, 2020. This unilateral decision caused dissatisfaction from the workers, because he argued that his work was still going on and felt that his rights were being harmed.

Every industrial relations dispute of any type must be resolved through negotiation or can be known as bipartite terms.<sup>12</sup> This is in line with the provisions of Article 3 paragraph (1) of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes.

The bipartite negotiation process is carried out in the following stages:

1. **Pre-consultation stage**
  - a. The party who feels aggrieved

<sup>11</sup> M. Thaib and Ramon Nofrial, *Op.cit*, p. 66.

<sup>12</sup> Rika Jamin Marbun, *Juridical Review of the Bipartite System in Industrial Relations*, SOSEK:

- takes the initiative to communicate the problem in writing to the other party
- b. If the aggrieved party is an individual worker who is not a member of a trade union/trade union, the worker can give power of attorney to the management of the trade union/trade union in the company to assist during the negotiation process
  - c. The employer or the company's management is obliged to resolve the dispute directly without intermediaries.

In the negotiation process, trade unions/labor unions and employers have the right to request assistance from members or their respective organizational apparatus.<sup>13</sup>

## 2. Negotiation Level

- a. Both parties inventory and identify problems
- b. Both parties have the opportunity to formulate and agree to the rules in writing and determine a mutually agreed negotiation schedule.
- c. In the provisions of the rules, both parties can stipulate that during the negotiations, each party continues to carry out their obligations as they should.
- d. The parties carried out negotiations in accordance with the rules and schedule that had been mutually agreed.
- e. If thirty working days have passed, bipartite negotiations can still continue as long as both parties agree to it.

- f. The final outcome of the consultation should be made in the form of a final brochure that at least contains:
  - 1) The full names and addresses of the parties;
  - 2) Date and place of negotiation;
  - 3) The subject matter or reason for the dispute;
  - 4) Opinions of the parties;
  - 5) Conclusions or results of the consultation; and
  - 6) Recording of dates and signatures from both parties who participated in the negotiations as proof of validity and agreement during the process.<sup>14</sup>

## 3. Stage After Completion of Negotiations

In this stage there are two possibilities, namely:

- a. If both parties succeed in reaching an agreement, a collective agreement is drafted and signed by the negotiators, then registered with the Industrial Relations Court. If the collective agreement is not implemented by either party, the aggrieved party can apply for execution to the Industrial Relations Court.
- b. If the negotiations are unsuccessful, one or both parties are obliged to report the dispute to the competent employment agency at the district or city level where the worker works, including evidence that efforts to resolve the dispute through

<sup>13</sup> Zaeni Asyhadie, *Op. cit.*, p. 166.

<sup>14</sup> *Ibid*, pp. 167-168.

bipartite negotiations have been made.<sup>15</sup>

Based on the results of the interview with the worker, Fz, it is known that he was the party who proposed bipartite negotiations, because he felt disadvantaged due to the unilateral termination of the employment relationship. Fz demanded his right in the form of payment of the remaining contract that had not been paid by PT. SI Pekanbaru Branch for nine months. However, bipartite negotiations between the two parties failed to reach an agreement, as the businessman still refused to fulfill the obligation.

If the bipartite negotiations are unsuccessful and the parties have made maximum efforts but still fail to reach a consensus, the termination dispute can be continued to the tripartite negotiation **stage**, one of which is carried out through a mediation **mechanism**. This mechanism aims to facilitate fair dispute resolution with the help of a neutral third party, thus enabling the achievement of solutions that accommodate the interests of workers and employers.

The word "mediation" comes from the English term *mediation*, which originally had its roots in the Latin *mediare* meaning "to be in the middle" or *medius* meaning "in the middle." In general, mediation can be understood as an action taken by an individual or institution to actively mediate a dispute between two or more parties to a dispute. The term also describes the role of third parties participating in disputes with the aim of helping the relevant parties reach a mutually agreed solution.<sup>16</sup>

<sup>15</sup> *Ibid*, p. 168.

<sup>16</sup> Riska Fitriani, *Alternative Dispute Resolution Through Mediation in the Riau Malay Indigenous Peoples*, Riau Law Journal Vol. 1 No.2 of 2017

Mediation is a process that aims to bridge two parties in dispute with the hope of reaching a mutual agreement. This process is facilitated by mediators, who play a role in helping related parties to explore various alternatives to conflict resolution. In his role, the mediator encourages both parties to reach a mutually beneficial agreement and can resolve disputes peacefully, so that conflicts can be ended without having to go through a formal litigation process.

The mediator does not have the authority to force the parties to the dispute to accept the solution offered. The decision on the agreement is entirely in the hands of the parties to the dispute. The mediator's job is simply to help find alternative solutions and encourage both parties to jointly resolve disputes that occur.<sup>17</sup>

"Article 3 paragraph (1) of the Decree of the Minister of Manpower and Transmigration Number Kep.92/MEN/VI/2004 which regulates the requirements to become a mediator, namely;

1. Civil Servants in agencies/agencies responsible for the field of employment;
2. Faith and fear of God Almighty;
3. Indonesian Citizen;
4. Be in good health according to the Doctor's Certificate;
5. Mastering the laws and regulations in the field of employment;
6. Authoritative, honest, fair and irreproachable;
7. Educated at least Strata One (S1); and
8. It has the legitimacy of the Minister of Manpower and Transmigration."

<sup>17</sup> Syahrizal Abbas, *Mediation in Sharia Law, Customary Law, and National Law*, Kencana, Depok, 2017

The results of the interview with Mr. Martaferi, a mediator from the Riau Provincial Manpower and Transmigration Office, show that mediators who have the authority to handle industrial relations disputes including disputes of rights, interests, termination of employment, and disputes between labor unions in one company must meet certain criteria that have been set. Mediators who do not meet one or more of the requirements according to Article 3 paragraph (1) of the Decree of the Minister of Manpower and Transmigration Number Kep.92/MEN/VI/2004 are considered not to meet the provisions. Thus, the person cannot act as a mediator of industrial relations. Thus, the person cannot act as a mediator of industrial relations. In addition to these requirements, the time period and procedure for the implementation of mediation are also regulated in detail in Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, which is the legal basis for the implementation of mediation at the formal level.

In the process of settlement through mediation, the mediator acts as a mediator between the parties to the dispute. This role is realized by actively helping the parties understand the subject matter of the dispute, providing guidance, and offering the most appropriate alternative solutions for dispute resolution, which are expected to be accepted and complied with by both parties.<sup>18</sup>

In carrying out their duties, mediators have a number of obligations that must be fulfilled, the obligations that

must be carried out by mediators are stipulated in Article 8 of the Decree of the Minister of Manpower and Transmigration Number Kep.92/MEN/VI/2004, which are as follows:

1. The mediator is in charge of summoning the parties to the dispute to provide the necessary information.
2. organizing and leading the mediation process.
3. assist in the drafting of a collective agreement when an agreement is reached.
4. drafting written recommendations if the agreement does not work,
5. making treatises related to the settlement of industrial relations disputes.
6. compile a report on the results of the dispute resolution.

Mediation between the parties to the dispute is not always successful; there are some cases where an agreement is reached, but not a few fail. Based on interviews with mediators from the Riau Provincial Manpower and Transmigration Office, mediation failures are often caused by internal and external inhibiting factors. One of the main factors is the inability of employers or workers to work together due to the existence of high egos among them. In addition, the involvement of third parties, such as a union or a legal representative from one party, sometimes complicates the mediation process and hinders the reaching of an agreement.

Based on an interview with the workers, Fz, the mediation carried out with the employer did not succeed in reaching a consensus. This is because the employer

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<sup>18</sup> Karmuji, S, *The Role and Function of Mediators in Civil Case Resolution*, Ummul Qura Journal Vol VII, No.1, 2016

argues that the termination of employment is in accordance with the applicable rules so that they refuse to pay the rest of the contract to the worker. On the other hand, the worker still objects to the termination of the employment relationship and demands his rights. Based on this information, it can be concluded that the failure of this mediation can be concluded largely due to the high ego of both parties, which hinders the achievement of a mutual agreement.

#### **B. The Impact of Non-Implementation of Mediators' Recommendations in Resolving Industrial Relations Disputes between Workers and Employers**

Mediation is an alternative way to resolve conflicts, where the disputing parties cooperate with a neutral mediator. The purpose of mediation is to reach an agreement that is mutually agreed upon by all parties. Mediators act as facilitators who help the parties understand each other's positions and seek mutually beneficial solutions. The mediation process is based on the principles of freedom, voluntariness, confidentiality, and neutrality, which are the main foothold for fair and effective dispute resolution.<sup>19</sup>

Based on the results of interviews with mediators from the Riau Provincial Manpower and Transmigration Office, the mediation procedure between workers and employers consists of several stages. The first stage is the recording of disputes, where the worker, in this case Fz, submits an application independently without being accompanied by a legal representative. At this stage, the recording officer at the Riau

Provincial Manpower and Transmigration Office reviewed the completeness of the documents submitted, including the minutes of the results of bipartite negotiations and the application letter for the settlement of industrial relations disputes.

The next stage is clarification and offering a solution solution. The Riau Provincial Manpower and Transmigration Office verifies that the worker does indeed work for the company in question and that the company is within the jurisdiction of the Agency. At this stage, the parties are given the opportunity to resolve the dispute through conciliation; If this option is not chosen, the case is then forwarded to the mediator to proceed through the formal mediation process.

Next, the mediator conducts the stage of summoning the parties involved. Before that, the mediator studies the case thoroughly and then prepares a written summons to the parties to the dispute to be present in the mediation process.

The final stage is the implementation of the mediation hearing, where each party brings important documents, such as employment agreements, collective bargaining agreements, company regulations, or other documents relevant to the terms of employment. This hearing aims to find a fair and mutually beneficial solution, so that disputes can be resolved peacefully without having to go through litigation.

Collective Agreement and Recommendations in the mediation process, if the parties reach an agreement, a collective agreement will be drafted. This

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<sup>19</sup> Imas Yuliana Nurasri, *Mediation Not Attended by One Party But Produced a Peace Act*, Journal of Contemporary Studies of Law and Society, 2023

agreement is signed by all parties to the dispute and witnessed by a mediator who facilitates the process. recognition and legal force so that it can be used as the basis for the implementation of the agreement between the parties in order to obtain legal certainty and executory power.<sup>20</sup> However, if the mediation does not reach an agreement, the mediator will issue a written recommendation.

Recommendation, Based on an interview with the mediator of the Riau Provincial Manpower and Transmigration Office, the mediation carried out by FZ and PT.SI did not result in an agreement so the mediator issued a "recommendation which contained:

a. Employee Statement

1. Mr. FZ works at PT. SI with the status of a Fixed-Time Work Agreement in accordance with Contract No. 015/SIPKU-SDM/SYF/IV/2020, valid from May 2, 2020 to April 30, 2021, with a position as a Surgical Excavation Supervisor and receiving a wage of IDR 9,350,000 per month.
2. Sdr. FZ's employment contract was terminated early by PT. SI on the grounds of reduced workload in the department where the worker is on duty.
3. Mr. FZ objected to the termination of the contract because he considered that the work was still ongoing and had not been completed with a third party, PT. CPI.
4. The PT. SI has issued a certificate (No. KET-003/SIPKU-ADM/VII/ASP/2020 dated July 2, 2020) stating that Mr. FZ's employment contract expires on July 27, 2020.

5. Mr. FZ demanded his right to the remaining contract for nine months, so that PT. SI is willing to pay for it.

b. Statement of the Entrepreneur

1. That Mr. FZ's workers are indeed employees of PT. SI who works with the Fixed-Time Work Agreement system in accordance with Contract Agreement Number .015/SIPKUSDM/SYF/IV/2020 from May 2, 2020 to April 30, 2021 with the position of Surgical Excavation Supervisor and receives a salary of IDR 9,350,000,- /month.
2. That the PT. SI has terminated the employment contract for Mr. FZ's workers on the grounds that there is an official letter No.HIS/002/PTSI/2020 issued by PT. CPI as a user to PT. SI on June 19, 2020 concerning the Work Authorization Plan which explains the periodic reduction of the use of personnel in the work of supervision projects in the remediation program in the SMO Minas and Duri areas of PT. CPI.
3. Before the employment contract ended, PT. SI has said that the number of active sites for Surgical Excavation work is only five sites (four in the southern area and one in the northern area). Therefore, CPI as the Contract Owner of CSRP decided on June 11, 2020 to reduce the number of CSRP personnel, especially the position of Surgical Excavation Supervisor.
4. With the reduction in the volume of work in the area, PT. SI decided to terminate Mr. FZ's employment

<sup>20</sup> Bayu Yudha Prasetya *The Position of the Regency/City Industrial Relations Mediator in the Settlement of Industrial Relations Disputes Between*

*Employers and Workers*, Employment Journal, Vol. 14 No. 1, 2019

contract as of July 27, 2020, and provide compensation in the form of one month's wages, namely wages for July 2020.

c. Legal Considerations and Mediator Conclusions

Based on the information from the parties and the results of the analysis of the available data, the following conclusions can be drawn:

- 1) That it is true that Mr. FZ is an employee of PT.SI who works with the Fixed-Time Work Agreement system in accordance with Contract Agreement No.015/SIPKU-SDM/SYF/IV/2020 from May 2, 2020 to April 30, 2021 with the position of Surgical Excavation Supervisor and receives a salary of IDR 9,350,000,-/month.
- 2) That the PT. SI has indeed terminated the employment of Mr. FZ's workers on the grounds of a reduction in the volume of work, including a reduction in the number of CSRPs, especially the position of Surgical Excavation Supervisor, as stated in the official letter No. HIS/002/PTSI/2020 issued by PT. CPI as the user of PT. SI on June 19, 2020 regarding the Work Authorization Plan, which describes the gradual reduction of the use of personnel in supervision projects in the remediation program in the SMO Minas and Duri areas of PT. CPI.
- 3) That the termination of the employment relationship carried out by PT. SI against Mr. FZ's employees on the grounds that the contract was terminated by a third party, namely PT. CPI, as stated in

Employment Contract No. 015/SIPKU-SDM/SYF/IV/2020 dated May 2, 2020, is considered by the mediator to be unacceptable, because in the employment contract agreement, the direct parties have the authority to make agreements, namely employers and workers.

- 4) That the attitude of Mr. Fz's workers who objected to the termination of the employment contract that was still running, on the grounds that the work was considered to still exist and the contract with PT. The CPI has not yet ended, considered by the mediator understandable, considering that workers feel aggrieved by the termination of the contract.
- 5) That the attitude of PT. The SI who only paid wages for one month, i.e. July, without compensating for the rest of the contract, according to the mediator, was unjustifiable and considered to have no valid reason.
- 6) In connection with this, the mediator argued that the termination of the employment relationship by PT. The SI against Mr. Fz should be guided by Article 62 of Law Number 13 of 2003 concerning Manpower.
- 7) To resolve this problem, bipartite negotiations and mediation/clarification have been carried out between the relevant parties, but the process has not succeeded in reaching an agreement.

Based on the above, in order to resolve the problem referred to, the mediator recommends:

- 1) So that PT. SI fulfills its obligation to pay Mr. Fz's rights in the form of the remaining employment contract for 9



(nine) months, with a wage calculation of Rp 9,350,000,- per month, so that the total to be paid is Rp 84,150,000,- (eighty-four million one hundred and fifty thousand rupiah).

- 2) So that Sdr.Fz workers can receive their rights as in point 1 above."

The settlement of industrial relations disputes through the Industrial Relations Court is carried out when bipartite negotiation and mediation efforts (tripartite negotiations) do not result in an agreement. In this process, the judge has full authority to regulate the course of the trial and make decisions on the case submitted. However, the litigation process in court tends to be complex, takes longer, and incurs higher costs when compared to dispute resolution through non-litigation channels.<sup>21</sup> Compared to settlement through non-litigation channels, so that settlement through court will be more detrimental to the parties, in this case workers and entrepreneurs.

Based on the interview with the worker, namely FZ, after the mediation they carried out did not reach an agreement, and the employer did not carry out the recommendation issued by the mediator to pay the rest of the contract, the worker filed a lawsuit with the industrial relations court.

## CONCLUSION

Mediation between workers and employers did not succeed in reaching an agreement. One of the main inhibiting factors is the attitude of employers who argue that the termination of employment is in accordance with applicable provisions, so they refuse to pay the rest of the contract to

the worker. On the other hand, workers still refuse the termination and demand their rights. This condition shows that the failure of mediation is greatly influenced by the high ego of both parties.

The study also emphasizes the consequences of not implementing the mediator's recommendations, which encourage workers to submit cases to the Industrial Relations Court, leading to a more complex, longer, and costly litigation process than resolving disputes through non-litigation channels. Thus, efforts to settle through the courts actually cause additional losses for both parties, both workers and employers, when compared to the potential results of effective mediation.

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