

INDUSTRIAL RELATION PROBLEMATICS DURING THE COVID-19 PANDEMIC: ASSESSING THE EFFECTIVENESS OF MEDIATION AS DISPUTE SETTLEMENT PROCESS

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ABSTRACT

The failure to produce a peace agreement as an implementation of the bipartite process open up opportunity for the parties to resolve their disputes by the tripartite stage. At this stage, although the parties are given the opportunity to choose the settlement model used either through arbitration, conciliation or mediation, in general, the parties have a tendency to choose the settlement model through mediation facilitated by the Manpower Office based on process efficiency. The purpose of this study is to identify and determine the characteristics of industrial relations disputes that occur in the tourism sector during the Covid-19 pandemic, to identify and find out the obstacles that occur in the implementation of industrial relations dispute mediation in the tourism sector during the Covid-19 pandemic, to measure and analyze how effective mediation is in resolving industrial relations disputes in the tourism sector during the Covid-19 pandemic besides to find and formulate efforts that can be made to strengthen the position of mediation as an alternative dispute resolution in industrial relations. The method used in this study is an empirical legal research method with a conceptual approach and a case approach.

Keywords: industrial relation; mediation; dispute settlement; tourism sector.

INTRODUCTION

The tourism sector is one of the sectors most affected by the Covid-19 pandemic. According to the Covid-19 Handling Committee and National Economic Recovery (KPCPEN), the tourism sector will be the last sector to recover from the impact of the crisis due to the pandemic. This is indicated by the number of foreign tourist arrivals which has decreased drastically and has not experienced significant improvement over the past two years. For Indonesia itself, the number of foreign tourist arrivals in 2020 only reached 4.02 million or decreased by 75.03% compared to 2019 which was recorded at 16.11 million visits.¹ According to data from the Central Statistics Agency, the number of foreign tourist visits to Indonesia in January 2021 decreased by 89.05% compared to January 2020, from 1.29 million visits to 141.26 thousand visits. When compared to December 2020, the number of foreign tourist visits in January 2021 decreased by 13.90%.²

The above condition and data show how seriously the impact of the Covid-19 pandemic has hit Indonesia's tourism sector. Since the first ILO Monitoring, the COVID-19 pandemic has increased

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¹ Dita Angga Rusiana, "Pariwisata Paling Terdampak Pandemi Wapres: kunjungan Wisman Turun 75%", <<https://ekbis.sindonews.com/read/541812/34/pariwisata-paling-terdampak-pandemi-wapres-kunjungan-wisman-turun-75-1631718560>>, [diakses pada 10 Desember 2021].

² Badan Pusat Statistik, "Jumlah kunjungan wisman ke Indonesia bulan Januari 2021 mencapai 141,26 ribu kunjungan", <<https://www.bps.go.id/pressrelease/2021/03/01/1797/jumlah-kunjungan-wisman-ke-indonesia-bulan-januari-2021-mencapai-141-26-ribu-kunjungan.html>>, [diakses pada 10 Desember 2021].

in intensity and global reach. Full or partial quarantine measures have now impacted nearly 2.7 billion workers, representing about 81 percent of the world's workforce.³ With the implementation of full or partial quarantines that restrict business operations and the movement of most workers, many people are even impossible to employ and even in certain situations have to undergo dramatic changes in their working methods. This condition then had a direct effect on several supporting sub-sectors, including the employment sector. The policy of regional lockdowns and social borders on a large scale causes economic and social activities to be disrupted.⁴ These interventions have greatly affected many business activities related to the tourism sector (accommodation, food and beverage services, travel agent services and trade related to the world of tourism). This causes a decrease in company revenues, especially in the tourism sector as a whole. The prolonged pandemic has resulted in many companies taking rescue policies that have direct implications for workers in an employment relationship.⁵ Various disputes within the framework of industrial relations then inevitably occur and must be resolved with wise steps considering that both companies and workers are both in difficult conditions due to the Covid-19 Pandemic.

The government responded to this condition by issuing various laws and regulations, the substance of which was to regulate policies during the Covid-19 pandemic. There are 28 related regulations issued starting from Government Regulation Number 49 of 2020 concerning Adjustment of Employment Social Program Contributions During Non-Natural Disasters for the Spread of Covid-19, In addition to the government issuing Government Regulation Number 21 of 2020 concerning PSBB (Large-Scale Social Restrictions) policies the government's strategy to prevent the corona virus from spreading further until the Instruction of the Minister of Home Affairs Number 47 of 2021 concerning the Enforcement of Restrictions on Community Activities Level 4, Level 3, Level 2 and Level 1 Covid-19 in the Java and Bali Regions.⁶ The impact of Covid-19 on the employment sector is very broad in terms of scope and this has never happened before which in fact requires adjustments to the work system in employment sector. In general, this adjustment usually follows the pattern of global economic activity. For example, related to the increase in the unemployment rate during the global financial crisis in 2009. What happened later and with the uncertainty regarding the situation and further developments regarding the Covid-19 pandemic, this situation can provide a graph of the increase in the unemployment rate in the employment sector. Although the steps taken by the government are generally aimed at capturing the impact of the current Covid-19 pandemic, in the current situation of the Covid-19 pandemic, in reality, in the world of employment, it is directly impacted (massive direct impact) as a result of quarantine and other measures. other sectoral measures as outlined in government policies in the form of regulations.

³ Internasional Labour Organizations, "emantauan ILO edisi ke 2: covid 19 dan Dunia Kerja Estimasi dan Analisis Baru", <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_741476.pdf>, [diakses pada 18 Desember 2021].

⁴ Rosiady Husaenie Sayuti, dan Siti Aisyah Hidayati, "Dampak Pandemi Covid-19 Terhadap Ekonomi Masyarakat di Nusa Tenggara Barat", *RESIPROKAL: Jurnal Universitas Mataram*, Vol.2, No.2, 2020, p.134.

⁵ Moh. Muslim, "PHK Pada Masa Pandemi Covid-19", *ESENSI: Jurnal Manajemen Bisnis*, Vol. 23, No. 3, 2021, p.357.

⁶ Biro Hukum Setjen Kemnaker, "Pengklasifikasian Peraturan Perundang-Undangan Substansi Kebijakan Masa Pandemi Covid-19", <<https://jdih.kemnaker.go.id/relaksasi-covid.html>>, [diakses pada 11 Desember 2021].

Likewise, specifically, the Minister of Manpower issued a Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 concerning the protection of workers/laborers and business continuity in the context of preventing and overcoming Covid-19 which regulates the protection of wages for related workers/laborers. The Covid-19 pandemic and efforts to prevent, spread and handle cases related to Covid-19 in the work environment.⁷ Recently, the Minister of Manpower also issued Regulation of the Minister of Manpower of the Republic of Indonesia Number 16 of 2021 concerning Guidelines for Providing Government Assistance in the Form of Salary/Wage Subsidies for Workers/Labourers in Handling the Impact of Covid-19. In terms of regulation, the Ministry of Manpower of the Republic of Indonesia itself has issued two Ministry of Manpower Regulation, two Ministry of Manpower Decree and four circular letters to anticipate termination of employment as a result of the pandemic.

Although various regulations and policies have been issued by the government in response to the prolonged Covid-19 pandemic, including in the Indonesian employment sector, the storm of industrial relations disputes that occurred during the Covid-19 pandemic is very difficult to avoid.⁸ Nationally, based on a survey conducted by the Ministry of Manpower of the Republic of Indonesia in 2020, it shows that around 88% of companies affected by the pandemic caused losses to company operations.⁹ Based on data from the Ministry of Manpower of the Republic of Indonesia in February 2021, it was recorded that 17.8% of companies terminated their employment during the Covid-19 pandemic, 25.6% of companies chose to lay off workers and 10% of companies chose to do both.¹⁰ Then on August 7, 2021, it was recorded that 538,305 workers experienced termination of employment, where this number has exceeded 50% of the estimate of the Ministry of Manpower for the number of Termination of Employment in 2021, which is around 895,000 people.¹¹ In terms of tourism employment, the number of workers who have been laid off has reached more than one million, 375,000 have been terminated, bringing the cumulative total to 1.4 million workers.¹²

The data above shows the complexity of the impact of the pandemic on the employment sector, including in the tourism sector. In addition to disputes related to Termination of Employment with various other models aimed at minimizing the impact of the pandemic, the working relationship between employers and workers is also colored by various other types of disputes that occur and are increasing during the Covid-19 pandemic, both in the form of rights disputes and conflicts of interest. There are several factors that influence the complexity of the impact of the pandemic on

⁷ Kementerian Ketenagakerjaan, "Menaker Terbitkan Surat Edaran tentang Perlindungan Buruh dan Kelangsungan Usaha Terkait Covid", <<https://kemnaker.go.id/news/detail/menaker-ida-terbitkan-se-penetapan-upah-minimum-tahun-2021>>, [diakses pada 11 Desember 2021].

⁸ Putu Ayu Tasya Agnesty, dan I Made Sarjana, "Perlindungan Hukum Terhadap Pemenuhan Hak dari Pekerja Yang Dirumahkan Pada Masa Pandemi Covid-19", *Kertha Wicara: Journal Ilmu Hukum*, Vol. 10, No. 10, 2021, p. 856.

⁹ Kementerian Ketenagakerjaan, *Op. Cit.*

¹⁰ Sulaeman, "Menaker: 17,8 Persen Perusahaan PHK Karyawan Selama Pandemi Covid-19", <<https://www.merdeka.com/uang/menaker-178-perusahaan-phk-karyawan-selama-pandemi-covid-19.html>>, [diakses pada 11 Desember 2021].

¹¹ Nurul Khadijah, "Kemenaker Resah, Jumlah PHK 2021 malah diluar Perkiraan Melebihi 50 Persen", <<https://www.pikiran-rakyat.com/nasional/pr-012389399/kemnaker-resah-jumlah-pekerja-kena-phk-2021-malah-di-luar-perkiraan-melebihi-50-persen>>, [diakses pada 11 Desember 2021].

¹² Idris Rusadi Putra, "Sektor Pariwisata paling terdampak Covid-19", <<https://www.merdeka.com/uang/sektor-pariwisata-paling-terdampak-covid-19-14-juta-pekerja-dirumahkan-di-phk.html>>, [diakses pada 11 Desember 2021].

the tourism sector so that the emergence of industrial relations disputes in Indonesia, among others, is caused by internal conditions that play a very important role in determining the relationship between workers/labor unions and employers, working conditions (working environment), and culture in the area. in the company (corporate culture). Also external conditions, namely the existence of the government in carrying out its duties and functions as a regulator that acts to make laws.¹³

Act No. 13 of 2003 concerning Manpower (hereinafter referred to as Labor Law) and Act No. 2 of 2004 concerning Settlement of Industrial Relations Disputes (hereinafter referred to as SIRD Law) have regulated the definition of industrial disputes, types and mechanisms for the settlement of industrial relations disputes. The disputing parties within the framework of industrial relations based on statutory provisions will go through several stages of dispute resolution, namely: bipartite, tripartite (arbitration, conciliation, mediation) before being able to choose dispute resolution through the Industrial Relations Court.¹⁴ Unbalanced conditions between the workers and the company at the initial stage of settlement through bipartite negotiations are often a stumbling block to optimizing this stage to resolve disputes.¹⁵ The failure to produce a peace agreement in the bipartite implementation then opens space for the parties to resolve their disputes at the tripartite stage.¹⁶ At this stage, although the parties are given the opportunity to choose the settlement model used either through arbitration, conciliation or mediation, in general the parties have a tendency to choose to use the settlement model through mediation facilitated by the local Manpower Office based on process efficiency compared to the model. others that may be chosen by the parties.¹⁷

This condition makes further stages, especially the implementation of mediation by the authorized agency, namely the Local Manpower Office, have an important role in the settlement of industrial relations disputes within the framework of the Indonesian industrial relations dispute settlement system.¹⁸ Mediation in Industrial relations then with its various characteristic advantages is very interesting to study in depth, especially regarding how its effectiveness in resolving industrial relations disputes in the tourism sector, especially in dealing with various disputes that occur due to the Covid-19 Pandemic. Based on the results of the research team's search, studies related to the effectiveness of industrial relations mediation have been conducted several times, but this research later has its own novelty and significance because there has not been found research that specifically tries to examine the implementation of mediation as a settlement of industrial relations disputes

¹³ Andry Sugiantari, "Penyelesaian Perselisihan Hubungan Industrial melalui Mediasi di Dinas Tenaga Kerja dan Transmigrasi Kota Semarang", *Diponegoro Law Review*, Vol. 4, No. 2, 2016, p. 6.

¹⁴ I Gusti Ngurah Adhi Pramudia, Nyoman A. Martana dan I Gusti Ayu Agung Ari Krisnawati, "Efektivitas Pelaksanaan Mediasi Sebagai Alternatif Penyelesaian Sengketa Perselisihan Hubungan Industrial", *Kertha Wicara: Journal Ilmu Hukum*, Vol. 01, No. 04, 2013, p. 2.

¹⁵ Agus Pramono, "Settlement of Industrial Relations Disputes and Termination of Work Relations according to the Applicable Legislation", *Walisono Law Review*, Vol.2, No.2. 2020, p.175.

¹⁶ Salahuddin Gaffar, Agus Mulya Karsona, Yani Pujiwati, dan Indra Perwira, "The concept of procedural law regarding the implementation of collective agreements with legal certainty in termination of employment in Indonesia", *Heliyon*, Vol.7, No.4, 2021.

¹⁷ Nyoman Satya Yudha Dananjaya (et.al.), *Buku Ajar Penyelesaian Sengketa Alternatif (Alternative Dispute Resolution)*, Universitas Udayana, Denpasar: 2017, p.83.

¹⁸ Revy S.M. Korah, "Mediasi Merupakan Salah Satu Alternatif Penyelesaian Masalah Dalam Sengketa Perdagangan Internasional", *Media Neiliti.com*, Vol.21, No.3, 2013, p.39.

that occur in the tourism sector as an impact of the Covid-19 Pandemic and reviewing related efforts to strengthen the position of mediation as an alternative to resolving industrial relations disputes in the tourism sector during the Covid-19 Pandemic.

Based on the description that has been presented, there are problems regarding the characteristics of industrial relations disputes that occur in the tourism sector during the COVID-19 pandemic, the obstacles that occur in the implementation of industrial relations dispute mediation in the tourism sector during the COVID-19 pandemic, the effectiveness of mediation in dispute resolution. industrial relations in the tourism sector during the covid-19 pandemic, efforts that can be made to strengthen the position of mediation as an alternative to resolving industrial relations disputes in the tourism sector during the covid-19 pandemic.

METHODS

The research methodology used is empirical research based on field research. Field research is used to obtain primary data by conducting research directly into the field and aims to obtain facts about the behavior of legal subjects related to the problems discussed.¹⁹ Peter Mahmud Marzuki mentioned that such research is focuses on individual or community behavior in relation to the law.²⁰ This research is related to the effectiveness of mediation in resolving industrial relations disputes in the tourism sector during the COVID-19 pandemic.

DISCUSSION

Characteristics and Obstacles Occurring in the Implementation of Industrial Relations Disputes Occurring in the Tourism Sector During the Covid-19 Pandemic

Referring to the SIRD Law, there are four types of industrial relations disputes, namely disputes over rights, disputes over interests, disputes over termination of employment, and disputes between trade unions/labor unions in one company.²¹ Disputes that occurred during the Covid-19 pandemic that occurred in the tourism sector did not have an impact on changes in the characteristics of industrial relations disputes because disputes that occurred were included in the four types of disputes as stated in the SIRD Law.²² However, the Covid-19 pandemic has resulted in an increase in the number of disputes that occur in the tourism sector, especially those dominated by the types of rights disputes and work termination disputes. In general, referring to field research conducted at several locations selected as samples (Bali and Yogyakarta) it was found that industrial relations disputes in the tourism sector occurred due to several main factors, namely²³:

1. The company temporarily defunct (could not ensure when will commence its business operation again)

¹⁹ Bachtiar, *Metode Penelitian Hukum*, UNPAM PRESS, Pamulang: 2019, p.34.

²⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, Prenada Media Group, Jakarta: 2010, p. 87.

²¹ Roni Saepul Rohman, dan Pamungkas Satya Putra, "Perbandingan Hukum Terhadap Penyelesaian Perselisihan Hubungan Industrial Sebelum Dan Sesudah Kemerdekaan Indonesia", *Kertha Semaya: Journal Ilmu Hukum*, Vol. 09, No. 08, 2021, p. 1263.

²² Wawancara di Disnaker Kabupaten Badung, Provinsi Bali, dan Disnakertrans Kota Yogyakarta & Prov. DI Yogyakarta.

²³ *Ibid.*

The implementation of Community Activity Restrictions (PPKM) has resulted in a decrease in the number of visitors to below 10% from normal days before this pandemic. The implementation of this PPKM resulted in many companies not operating which affected the company's total revenue. As a result, many workers in several sectors such as hotels and restaurants take unpaid leave and lay off their workers.

2. Financial difficulties experienced by the company

Companies that were not operating during the Covid-19 pandemic, of course, resulted in financial difficulties, which caused some companies to choose to implement a policy of reducing workers' wages which is tantamount to reducing workers' rights.

3. Difficulty for paying workers' rights in accordance with the laws and regulations

Companies that are not operating will certainly experience financial difficulties, especially in terms of payment of workers' rights in accordance with the laws and regulations. During the Covid-19 pandemic, layoffs were unavoidable, but on the other hand the company was also unable to pay for workers' rights for the layoffs that occurred so they were very vulnerable to being the cause of industrial relations disputes.

The Covid-19 pandemic has not significantly changed the types of industrial relations disputes that occur in the tourism sector. According to data and interviews in the field, it was found that of the four types of disputes, the dominant characteristic of industrial relations disputes in the tourism sector during the Covid-19 pandemic was that it focused more on rights disputes and work termination.²⁴ Rights disputes are disputes that occur due to non-fulfillment of rights, due to differences in implementation or differences in interpretation of the provisions of laws and regulations, work agreements, company regulations, or collective work agreements. Disputes over rights occur because the company is experiencing (financial) difficulties which then have an impact on difficulties in fulfilling workers' rights such as reducing wages or arranging wage payment mechanisms to adjust the company's conditions.²⁵

Work termination disputes is dispute that arise because there is no conformity of opinion regarding the termination of the employment relationship carried out by one of the parties.²⁶ Work termination disputes based on the condition of the company choosing to unilaterally terminate the employment relationship in response to the company's conditions affected by the COVID-19 pandemic, the unilateral termination scheme, the policy of laying off workers indefinitely, and the non-payment of workers' rights in accordance with the provisions of later legislation. become the basis for the emergence of industrial relations disputes, especially related to layoffs.²⁷

The provisions of Article 3 of the SIRD Law stipulates that the dispute resolution mechanism in every industrial relations dispute between workers/labor or trade unions/labor unions and employers must first be through bipartite negotiations. Within the scope of industrial relations

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ I Wayan Agus Vijayantera, *Perselisihan Pemutusan Hubungan Kerja Sebagai Dampak Penggabungan, Peleburan, Pengambilalihan Dan Penutupan Perusahaan*, Tesis Pada Program Studi Magister Ilmu Hukum Universitas Airlangga, Surabaya: 2016.

²⁷ Wawancara di Disnaker Kabupaten Badung, Provinsi Bali, dan Disnakertrans Kota Yogyakarta & Prov. DI Yogyakarta.

disputes, these are the four types of disputes in industrial relations disputes.²⁸ If this bipartite negotiation fails, the Manpower Office will offer the parties whether to resolve the dispute through conciliation or choose to resolve it through arbitration.²⁹ If within 7 working days the parties do not make a choice, the Manpower Office will delegate the settlement of the industrial relations dispute to the mediator.³⁰

Settlement through mediation is not offered together with conciliation or arbitration as a way of settling industrial relations disputes or it can be said that the parties in dispute are not given the opportunity to determine mediation as an option for resolving industrial relations disputes.³¹ This because if the dispute resolution through mediation is not a voluntary choice of the parties, then this will not be in accordance with the principle of voluntarism in mediation, i.e. the disputing parties come to the mediator of their own volition voluntarily and there is no coercion from outside parties. or the parties take mediation not based on orders or statutory obligations.³² In the context of resolving industrial relations disputes, based on field research considering a homogeneous issue, various obstacles were found in the implementation of mediation during the Covid-19 pandemic, including³³:

1. Many Companies Are Not Operating During the Covid-19 Pandemic

Companies that do not operate cause the company leaders to not work and calling the parties to the implementation of mediation becomes difficult so that the presence of the parties hinders the implementation of mediation.

2. Mobility Restriction Policy during the Covid-19 Pandemic

Restrictions on mobility during the Covid-19 pandemic have a major influence on the implementation of mediation. Use of limited space, antigen and/or PCR policy as a condition for holding meetings, search for data in companies is hampered due to mobility restriction policies. Another obstacle that occurs due to this limitation of mobility is that mediators often have to clarify and mediate via online which is deemed less effective.

3. Use of Online Facilities in the Implementation of Mediation

The implementation of mediation using online media still encounters various obstacles such as the availability of networks between the parties and other technical obstacles that make mediation difficult to do. The success rate of online mediation is not the same. From the employee side, they feel dissatisfied and uncomfortable because they cannot meet face to face with the Company. Even the mediator is unable to dig deeper into the problems of each party due to various limitations of online facilities/media. The

²⁸Rai Mantili, "Konsep Penyelesaian Perselisihan Hubungan Industrial Antara Serikat Pekerja Dengan Perusahaan Melalui Combined Process (Med-Arbitrase)", *Jurnal Bina Mulia Hukum*, Vol. 6, No. 1, 2021, p.48.

²⁹Andika Dwi Yuliardi, dan Imam Budi Santoso, "Upaya Arbitrase Dalam Penyelesaian Perselisihan Hubungan Industrial Didasarkan Adanya Kesepakatan Para Pihak", *Prespektif Hukum Hangtuah*, Vol.22, No.1, 2022, p.143.

³⁰Irawan. "Penyelesaian Perselisihan Hubungan Industrial Melalui Mediator", *Jurnal IUS Kajian Hukum dan Keadilan* Vol. 1, No. 2, 2013, p.372.

³¹Djumardin, "Mediasi Sebagai Pilihan Penyelesaian Perselisihan", *Jurnal Hukum JATISWARA*, Vol. 30, No. 3, 2015. p.481.

³²Irawan, *Op.Cit.* p.371.

³³Wawancara di Disnaker Kabupaten Badung, Provinsi Bali, dan Disnakertrans Kota Yogyakarta & Prov. DI Yogyakarta.

important thing about the implementation of mediation is that the mediation process requires the physical presence of the parties.

4. The Need for Persuasive Action (Direct) in the Implementation of Mediation

The implementation of mediation in industrial relations disputes really requires persuasive action to be able to produce a concensus agreement which is then translated into a collective agreement. Mediation using online facilities certainly cannot present the parties directly, this is very difficult for the implementation of mediation both for the mediator and for the parties to be able to communicate with the heart to produce an agreement in the form of a win-win solution. The implementation of mediation requires persuasive action to be able to produce a mutual agreement which is then translated into a Collective Agreement. Mediation using online facilities is very difficult for the implementation of mediation both for the mediator and for the parties to be able to communicate with the heart to produce an agreement in the form of a win-win solution where the mediator must pay attention to procedures to invite employers or workers to find common ground psychologically. No agreement was reached because a persuasive mechanism was not reached. So in the end, only recommendations were made that were not optimal and not infrequently industrial relations mediation ended up in the Industrial Relations Dispute Tribunal.

5. Mediator's Ability in Technical Mastery of Negotiations and Mediator's Mastery of Specific Sub-Sectors of Science

Mastery of negotiation techniques and mastery of sub-fields of science in particular by the mediator is very necessary so that industrial relations mediation can be carried out properly so that a good agreement can be obtained for both parties. Mediator's lack of ability in mastering negotiation techniques and mastery of sub-fields of science in particular making this an obstacle in industrial relations mediation.

6. Lack of Information and Reluctance of Workers in Reporting Disputes

Workers are reluctant to submit or report disputes that occur to the relevant manpower agency, such as the uncertainty of the time period and the percentage of wages paid by the company. Workers are reluctant to report their situation where they should submit it either in the form of a complaint, report, or consultation so that the relevant Manpower Office can assist in handling it. The desire of the workers to know what should or what ideally happens between them and the entrepreneur in industrial relations is still lacking. Sociological character factors that makes worker lack of information, more accepting and reluctance.

The Effectiveness of Mediation and Efforts to Strengthen Mediation Position as an Alternative to Resolve Industrial Relations Disputes in the Tourism Sector during the Covid-19 Pandemic

Mediation was chosen as an alternative dispute resolution (ADR) in industrial relations because it already has a clear mechanism, which refers to the provisions of the SIRD Law and the Minister of Manpower Regulation no. 17 of 2014 concerning the Appointment and Dismissal of

Industrial Relations Mediators and Mediation Work Procedures.³⁴ The Industrial Relations Dispute Settlement Law provides a choice of several alternative types of dispute resolution. However, mediation is still the main choice based on cost considerations, and the unavailability of a conciliator.

Mediation has various characteristic advantages, one of which is the presence of a neutral third party (mediator) from the local manpower agency who assists the parties in resolving industrial relations disputes that occur. Field Research Data at the Manpower Office selected as research locations shows an increase in the number of disputes during the Covid-19 pandemic, especially in the tourism sector which includes hotel/lodging services, restaurants, souvenirs, etc.³⁵

The field research data at the Manpower Office selected as the research locations are as follows: Data from the Industry and Manpower Office of Badung Regency Bali shows that the number of workers laid off in 2020 are 1,551 workers. while the number of laid off workers in 2021 are 204 workers. In 2020, there were a total of 118 disputes that entered the mediation process, 51 disputes completed/mutual agreements, 22 recommended/failed disputes, currently in the process of 45 disputes, consisting of 53 related to rights, 2 related to interests, 63 work termination and no labor union disputes. Then in 2021, a total of 54 disputes entered the mediation process, completed/mutual agreement, namely 25 disputes, recommendations/failed 12 disputes, currently in the process of 12 disputes and revoked as many as 5 disputes. These disputes consist of 27 rights disputes, 4 interest disputes, 23 work termination disputes and no labor union disputes.³⁶

Data from the Yogyakarta Provincial Manpower Office in 2020, at the peak of the pandemic, shows that there were 111 disputes over layoffs with a total of 547 workers, with the results of 104 successfully resolving/mutual agreements and 88 in the form of recommendations/unsuccessfully resolved. Then in 2021 the number of layoffs disputes that occurred was 88 disputes involving 442 workers, with details of 68 disputes reaching an agreement and 33 ending with the issuance of recommendations. In the type of rights disputes, it was recorded that there were 67 disputes in 2020 involving 579 workers of which 52 were successfully mediated (resulting in collective agreement) and 6 disputes with recommendations. In 2021 for types of rights disputes, it was recorded that there were 46 disputes involving 133 workers with details of 25 ending with mutual agreement and 4 with recommendations.³⁷

Meanwhile, Yogyakarta City Manpower Office data shows that industrial relations disputes are submitted to the Manpower Office, on average there are 3-5 disputes per month. The processes taken are also different, some are at the consultation, bipartite, and mediation stages; Yogyakarta City Manpower Office data shows that accumulatively there were 25 cases of disputes that entered in 2020, while industrial relations disputes in various sectors in 2021 there were 31 cases of disputes. Data on dispute resolution through the Yogyakarta City Manpower Office shows that the majority of

³⁴ Akbar Pradima, "Alternatif Penyelesaian Perselisihan Hubungan Industrial di Luar Pengadilan", *DIH Jurnal Ilmu Hukum*, Vol. 9, No.17, p.12.

³⁵ Wawancara di Disnaker Kabupaten Badung, Provinsi Bali, dan Disnakertrans Kota Yogyakarta & Prov. DI Yogyakarta.

³⁶ Data pada Dinas Tenaga Kerja Kabupaten Badung, Provinsi Bali.

³⁷ Data pada Dinas Tenaga Kerja Provinsi Yogyakarta

dispute resolution ends with collective agreement. As for the recommendation, it is issued if one of the parties is adamant or rigid.³⁸

Based on the data and results of interviews conducted by the research team on several industrial relations mediators at the Manpower Office designated as the object of research, it was found that the implementation of industrial relations dispute resolution through mediation in the tourism sector during the Covid-19 Pandemic in quantity (number of settlements) showed effectiveness. which is quite good but in its implementation there are still various (practical) obstacles that must be immediately strengthened to bring back the effectiveness of industrial relations mediation as a form of ADR with its various characteristic advantages.

The emphasized of the implementation of mediation as ADR in the tourism sector during the Covid-19 pandemic has shown quite good effectiveness, although there are still obstacles in its implementation. Therefore, efforts are needed to strengthen the position of mediation itself as an alternative to resolving industrial relations disputes in the tourism sector during the Covid-19 pandemic so that the existence of this mediation does not diminish. Some of the efforts made to strengthen the position of mediation as ADR in the tourism sector during the Covid-19 pandemic are as follows:³⁹

1. Prioritizing the Implementation of Mediation with the Direct Presence of the Parties

Efforts that can be made to strengthen the position of mediation in terms of implementing mediation that require persuasive (direct) action is to prioritize the implementation of mediation with the direct presence of the parties. If the parties are present in person, these three obstacles will be reduced and the implementation of mediation will be more effective.

2. Strict Arrangements Regarding Summons of the Parties, Authority of the Mediator to Enter the Company (Collecting and Requesting Data/Information), and Supervision of Mediation Results

Establish a strict regulation regarding the summons of the disputing parties which is carried out so that the summoned parties can attend the mediation on time, so that the implementation of the mediation can run well. Strict regulation regarding the mediator's authority to collect and request data or information at the company is also an effort that can be made so that the performance of the mediator can be maximized and there is no gap for the company to not accept if the mediator enters the company. Supervision of the results of the mediation also needs to be considered and implemented so that new obstacles do not arise such as fraudulent acts by one party, resulting in losses to the other party, and the disappointed party no longer believes in the mediation or in the mediator.

3. Implementation of Dispute Resolution Training, Negotiation Techniques and Regular Upgrading of Mediators

³⁸ *Ibid*

³⁹ Wawancara di Disnaker Kabupaten Badung, Provinsi Bali, dan Disnakertrans Kota Yogyakarta & Prov. DI Yogyakarta.

Dispute resolution training, negotiation techniques, and periodic upgrading of mediators are indispensable things to strengthen the position of mediation because disputes are not stagnant, so knowledge must always be upgraded. Mediators in DIY regions also often hold meetings to discuss cases in each district and city to share perceptions, so that the statements that emerge from the mediators in solving problems can be unified, while also discussing cases that have not been resolved in each. each area.⁴⁰

To strengthen the position of mediation as an alternative for resolving cases, especially industrial relations disputes, the Yogyakarta City Manpower and Transportation Office always carries out Technical Guidance and Socialization which focuses on the steps that must be taken by the parties to resolve disputes before reaching the mediation stage.⁴¹ For example, before mediation, the bipatriate process must first be passed, because mediation will go after the bipatriate process. The Yogyakarta City Manpower and Transportation Office educate Workers because their positions are certainly different in terms of knowledge and understanding of the substance and material related to types of industrial relations disputes. The Yogyakarta City Manpower and Transportation Office carry out this technical guidance and socialization targeting the mixed trade unions/labour unions.

4. Education for Mediators towards Mastery in Specific Fields of Science such as: Sub-Specialist Wages/Others

The mediator as a representative of the government in the settlement of industrial relations disputes must play a role in balancing the position of the parties (workers and employers) in the settlement of industrial relations disputes, especially in the implementation of mediation.⁴² Therefore, education for mediators related to mastery of the field of science in particular must be carried out as an effort to strengthen the position of mediation. Mastery in the field of science specifically by mediators, for example, sub-specialist wages, sub-specialist working time, sub-specialist rest time, and so forth. If the mediator is given more in-depth education regarding this matter, the settlement of industrial relations disputes through mediation will be more effective.

5. Provision of Sufficient Information to Workers Regarding Workers' Rights and Industrial Relations Dispute Resolution Mechanisms (Especially Mediation)

The mediator plays a role in balancing the position of the disputing parties, namely the workers and employers in the settlement of industrial relations disputes, especially in the implementation of mediation. This balance can only occur if the workers also know their rights in the laws and regulations so that the provision of information by the mediator (government) becomes an important element in realizing the settlement of industrial relations disputes. In addition to information on workers' rights, the mediator is also obliged to provide sufficient information related to the industrial relations settlement mechanism to

⁴⁰ Wawancara di Disnakertrans Kota Yogyakarta & Prov. DI Yogyakarta.

⁴¹ *Ibid.*

⁴² Sri Puspitaningrum, "Mediasi Sebagai Upaya Penyelesaian Sengketa Perdata Di Pengadilan", *Jurnal Spektrum Hukum*, Vol.15, No.2, 2018, p.281.

the workers. Providing sufficient information related to workers' rights and the mechanism for resolving industrial relations disputes through mediation to the workers is made a priority because the direction of the law expects workers and employers to be equal even though in reality they are not equal. The equality expected by the law must be supported by knowledge.

6. Budget Increase in the Implementation of Industrial Relations Mediation

The implementation of industrial relations mediation certainly requires a large budget. This budget is usually needed when the parties need expert testimony or witnesses at the time the mediation is carried out. If the government increases the budget for the implementation of industrial relations mediation, the parties who are in dispute, both from the workers/labor unions or the trade unions/labor unions, as well as the company, will no longer hesitate to choose mediation as the APS they experience.

CONCLUSION

The characteristics of industrial relations disputes that occurred in the tourism sector during the Covid-19 Pandemic were dominated by the types of rights disputes and work termination disputes which were mostly caused by many companies not operating during the pandemic, financial problems with companies, and the company's inability to pay workers' rights in accordance with applicable laws and regulations. The implementation of industrial relations mediation in the tourism sector during the Covid-19 Pandemic still leaves various (practical) obstacles that must be resolved immediately including: the number of companies that are not operating (resulting in difficulties in calling parties), mobility restriction policies, use of online/online facilities. In the implementation of mediation, the need for persuasive (direct) action in the implementation of mediation, the ability of the mediator in mastering negotiation techniques and the mediator's mastery of sub-fields of science in particular, as well as the lack of information and the reluctance of workers to report disputes that occur.

In addition, the implementation of the settlement of industrial relations disputes through mediation has shown a fairly good effectiveness but in its implementation there are still various (practical) obstacles. There are several efforts that can be made to strengthen the position of mediation as an alternative to resolving disputes in the tourism sector, including: prioritizing the implementation of mediation with direct attendance, strengthening arrangements regarding the summons of the parties, the authority of the mediator to enter the company, and supervision of the results of the mediation implementation; Implementation of training on dispute resolution, negotiation techniques and upgrading of mediators on a regular basis; Education for mediators towards mastery of specific fields of science; Providing sufficient information to workers regarding rights and mechanisms for resolving industrial relations disputes; and Increasing the budget for the implementation of industrial relations mediation.

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