The Role of Moderator in Completion the Industrial Relations Disputes Through Mediation in the Employments Agencies of Papua Province

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**ABSTRACT**
The aims of this research to know about mechanism of mediation in completion the industrial relations disputes in The Employments Agencies Papua Province and constrains faced by mediator in complete industrial relation disputes. Research of methodology which is used is normative juridical and empiric juridical research method that is study library (law material study) and field study (interview) against mediator in completing industrial relations disputes through mechanism of mediation. The result of the research show that basically the mediator in the Employments Agencies Papua Province in doing his duty to completing industrial relations disputes has been suit with mechanism of mediation, but there are some constrains which is faced by mediator in completing industrial relation disputes such as the limitation of the mediator of industrial relations and lack of monitoring to the districts to achieve information, data about company conditions and lack of budget which provided. Besides that, the written advice which published by mediator sometimes not implemented by one of the party or both of the party which disagree, it is surely can be disadvantageous one of o both of the party which disagree.

**INTRODUCTION**

Talking about employee problem is a complex problem. It is because employee problem closely related with continuous wheel of development is being run. In running the wheel of development employee factor is a dominant means from various other components because employee besides as a subject of development also as an object of the development itself.
Work relationship in basically is a relationship between workers and employers after the existence of work agreement that is an agreement where the workers bind themselves to other party for work by get paid and the employers state their ability to employ the worker and pay the salary.

Based on Legislation No. 13 Year of 2003 (Article 1 number 15) about employee mentioned that work relationship is a relationship between employer with employee/labor based on employment agreement which has job elements, salary and order. So, it is clear that work relationships occur because of the employment agreement between the employers with the employee/labor.

In Indonesia itself industrial relationship which is known as long as it is a relationship which formed between actors of goods industry and/or service which is contains of elements employers/businessman and employee/labor and the government which is based on the value of Pancasila and Basic Legislation of Republic Indonesia Year of 1945 (Article 1 number 16 Legislation No. 13 Year 2003).

The conducive of industrial relationship between the businessman and the employee become a main key to avoid termination of employment (PHK), increasing the employee welfare and also expanding new job opportunities to tackle unemployment in Indonesia.

The fact which is happened nowadays illustrate that the industrial relationship is not always running well and smoothly. Every industrial relationship there will be differences of opinion and interest between the employer/businessman and employee/labor which can disputes/conflicts.

The meaning of Industrial Relationship Disputes has been clearly stated in Article 1 number 1 Legislation No. 2 Year of 2004 about Completion of Industrial Relationship Disputes that is “Industrial Relationship Disputes is differences of opinion which caused contradictions between the businessman or group of businessmen with the employee/labor or labor union because of a dispute about right, interest dispute, employment agreement dispute and dispute between labor union in the company.

Industrial Relationship Disputes which is happened actually can be completed by the parties who disagree through bipartite negotiation that is a negotiation between the employee/labor and the employers/company. But because both of the parties no one is willing to budge so the solution is incomplete the disputes.

The neutral mediator contains a meaning that the mediator is not take side (impartial), doesn’t have interest with the dispute that happened, also not benefited or harmed if the dispute can be completed or if the mediation deadlocked. (TakdirRahmadi; 2010: 14)

Based on regulation which generally accepted, dispute completion by mediation there is no element of coercion between the parties and mediator, the parties ask voluntarily to the mediator to help resolve the conflict. Because of that the mediator authorized only to assist the parties in order to reach agreement which only decided by the parties whose disagree.

As an outside party of the disputing parties, the mediator doesn’t have authorization to force. The mediator obliged to meet or confront the disputing parties. After knowing the principal case the mediator can arrange the completion proposal which is offered to the disputing parties. The mediator must be able to create conducive condition which can guarantee the creation of compromise between the disputing parties to gain win - win solution. If the completion proposal which is offered by the mediator approved, then the mediator can be drawing up a written agreement to be signed by the parties.

The problem in this research is how the mechanism of mediation in Completing Industrial Relationship Disputes in Employees Agencies Province of Papua and what the constraints which is faced by the mediator in completing Industrial Relationship Dispute?
METHOD

Research of method which is used in this research is normative law research that is law research which is contained in the legislation and empirical law research that is law research that study and collect field data which is in the research location which is relate with the problem that researched through interview which is done to the mediator in Employee Agencies Province of Papua. In this research the tools which is used in the collecting data is study of library and interview.

RESULTS AND DISCUSSIONS

1. Mechanism of Mediation in Completing of Industrial Relationship Dispute in Employee Agencies of Papua Province

Employee Agencies Province of Papua is one of Device Area Organization (DAO) who are in Province Papua District Government environment. Employees Agencies of Province Papua is an Agencies who responsible against the problem which is related with employees and transmigration.

Related with handling problem of Industrial Relationship Disputes in Employee Agencies Province of Papua, so the field whose handle the problem is International Relationship (IR) Field, through Section of the Dispute which has duty prevention and resolution of employment disputes.

In case completing industrial relationship disputes through mediation efforts, Employees Agencies Papua Province is an institution who handle problem of industrial relationship disputes through the mediation in the level of province or districts which doesn’t have mediators. If there is industrial relationship dispute between employee/labor and employers/businessman which occurred in the districts which there is no mediator or a competent government official to completing the dispute, then those dispute resolution case delegated to Labor Office which domiciled in the province of Papua.

In doing the mediation of industrial relationship disputes, Employee Agencies Province of Papua have done the processing of mediation according to the existence mechanism and successfully dealt with well. It can be seen from numbers of industrial relationship disputes cases which handled by Employees Agencies Province of Papua over the last 3 (three) years since 204 until 2016 which mostly ends in mutual agreement/collective agreement between both of the party which are disagree compared with the result which issued by mediator.

In Article 4 paragraph (3) Legislation No. 2 Year of 2004 mentioned that the institution who authorized in the field of employees should offer the resolution through conciliation or arbitration, but in fact in the Employee Agencies Province of Papua no conciliation or arbitration settlement model was found, it is because the conciliation or arbitration institution doesn’t exist in the Province of Papua. Then after the parties record the dispute in the Labor Office Province of Papua by attaching bipartite evidence of the negotiations next step which is done is resolution through mediations. Case recording written on Dispute Agenda which contain of date of receipt of the complaint, the party who complaint, identity both of the parities, problem of dispute, dispute resolution and the mediator who handle.

In implementation, before report the dispute to the mediator the parties whose disagree should to hold the bipartite negotiations first. Bipartite negotiation is a negotiation which is done by both of the parties whose disagree without involving by
third party. It can be seen from the treatise which is attached when one of party or both of the parties reported the dispute to the mediator.

If the bipartite negotiation is failed, then one of the parties reported it to the authorized institution to completing the dispute, it is Employee Agencies of Province Papua. In the report, both parties should to attach the evidence of negotiation or treatise which is state that bipartite negotiation is failed to taken. After that have just done the process of mediation by the mediator.

Before the mediation hearing implemented on both sides whose are disagree give the opportunity once more by the mediator to do the negotiation even in bipartite level the negotiation is considered a failure because no agreement was reached. If the negotiation which is done in this government level meet an agreement between both sides, then the mediation hearing no need to be done. Both sides whose are disagree make a collective agreement which was witnessed by the mediator.

The mediation hearing is done depend on the needs, but usually only done in one meeting has been found an agreement. If in one hearing has been found an agreement from both sides, then it is no needs to have a hearing again. But if in the mediation hearing difficult to met an agreement from both sides, so the mediator give options or choices which is taken from information of the parties while the hearing which next delegated to the parties again will they agree or not against the choices was given.

If in the mediation hearing both the parties has meet an agreement, then a collective agreement (CA) is made which is signed by both parties and the mediator which is then registered to the Industrial Relations Court (IRC) by one of or both of the parties whose are disagree to obtain the Registration Proof Certificate. If both of the parties didn’t meet an agreement, then the mediator issued a written advice. Written advice can change into collective agreement when the advice is approved by each parties and the dispute is considered complete. If the written advice not approved by the parties, then one of or both of the parties can raise the issue to the Industrial Relationship Court (IRC).

The mediator authorization is only until the written advice concerned. If one of or both of the parties willing to raise the dispute case to the level of Industrial Relationship Court (IRC) level or not it is not the mediator of Employee Agencies Province of Papua business anymore.

2. The Constraints which is Faced by the mediator in Completing Industrial Relationship Dispute

Mediation is one of industrial relationship dispute resolution’s media which is probably can make the completing of dispute is not as expected by the parties whose are disagree. Generally the parties whose are disagree know that mediation is not the only way to completing industrial relationship dispute, so each parties will work how their interest is not harmed by other party, so in the process of mediation will found the constraints which can complicate the process of completing industrial relationship dispute so that if these obstacles can’t be faced by the mediator, then most likely the process of completing industrial relationship dispute through this mediation will be failure and will not find a way out so it needs other media to complete it.

In order to implementing the duty or action in completing dispute/disagree of industrial relationship, not infrequently appears a barrier. As well as what happens in completing industrial relationship dispute between employee/labor with employer/businessman which is done by the mediator in Employee Agencies Office Province of Papua. The mediator which duty in Employee Agencies Office Province
of Papua and whose are achieve Competence Certification numbers 8 (eight) persons. But there are some between those mediators who currently occupy structural positions, so then who usually handle the problem of industrial relationship dispute which is done by Employee Agencies Province of Papua only 4 (four) persons of the mediators. Those four mediators which is in Employee Agencies Province Papua has fulfill all the conditions which is determined in the Decision of Employee and Transmigration Minister.

Based on interview result with the mediators in Employee Agencies Province Papua it was found a fact that those constraints which is faced by the mediators in completing industrial relationship dispute in Employee Agencies among others:
1. Difficult to bring businessman to attend in the meeting or hearing which is held by the mediator. Businessman usually has their own busy so don’t have time to attending in the meeting and only represented by personal staff only. It is can make the process of mediation will become longer even there is settlement period, because company representative should report the result of the meeting to the businessman first.
2. Negotiation treatise bipartite level which is done between employee/labor with employer/businessman sometimes there is no/not is attached, it is due to non-bipartite negotiations between both parties. So after the dispute case registered to Employees Agencies Office Province of Papua, then the industrial relationship mediator before doing mediation previously hold the clarification or bipartite negotiation between employee/labor with the employer/businessman in government level.
3. Sometimes there is a company who doesn’t have company regulation and also doesn’t have collective agreement letter between employers and employee, so both of the employee and employers lack of understanding their rights and obligation in doing the duty and in the absence of company regulations which also applied, so it complicating the mediator in giving understanding for the employee nor the company itself about what the violation which has done both by the employee nor by the company I there is a dispute between both of the parties.
4. Each party is avoided the regulation which is determined. Before the process of mediation is done a mediator have told to the parties to obey the rules apply while the process of mediation takes place, but in fact there still from the parties which infringe the rules that made, for example each party looks like want to strike down each other by revealing weakness and worse of other party, besides that many of the parties whose present not in time even don’t want to attend when called by the mediator to do the mediation hearing.
5. The parties not cooperative and force the opinion. Very often occur in mediation hearing that each party force their opinion, the employers for example often insist that they never do the rights violation. The employee also sometimes the demands they are asking are too burdensome of the employers, so the employer stick to their stance, therefore the process of mediation will failure to reach an agreement. Besides that, each party doesn’t want open, they often cover the fact which is occur, then the mediator hard to found the fact which is real happen.
6. Sometimes in the ongoing negotiation process those parties whose are disagree often stuck in a cycle which show the position in giving opinion, both parties whose are doing the negotiation often don’t understand what is the driving force or motivation behind their position or demand then each party always assume that their opinion which should to obeyed without notice the condition or other opinion.
7. Lack of the mediator compared with numbers of company which exist. It is especially occurred in the local districts. In district, the officials who master the law of employment numbers is a little while the dispute which is occur pretty much even in some region which don’t have a mediator whereas the dispute cases which is occur sometimes complicated and hard to completed.

8. The mediator in Employee agencies of Papua Province in completing numbers of industrial relationship dispute’s cases often do not work well. It is caused due to lack of budget availability from the government both central or local for the mediator which is in the province to directly go to the district to in order to completing the disputes which occur in the region which don’t have a mediator. Vice versa for the mediator which in region quite difficult to delegate the industrial relationship dispute’s case in district region which can’t handled and completed by the mediator which in the district region to be handled by the mediator in Province agencies. It is caused due not availability enough of budget and also transportation which is inadequate. Therefore, communication and consulting by the mediator which in the province and in the district region only by phone and via e-mail. And if there are files which need to be signed by mediator in province, then the suggestion’s files sent by email or delivery service.

9. Decision of mediation sometimes not implemented. Even the resolution of industrial relationship dispute by mediation more used by employee/labor or employer/businessman in completing the dispute which occur, however thee are weakness in those mediation, one of them is the decision which is agreed sometimes not implemented by one party.

The mediator has been made powerless by Legislation No. 2 Year of 2004 because the mediator doesn’t have force effort to the party who rejected the suggestion, which also not continuing the completing of the disputes to Industrial Relationship Court (RC) to obey and implementing suggestion content. The mediator can issue the suggestion, but the mediator can’t enforce the suggestion. The mediator who issued the suggestion but don’t have authorization to force the party who rejected the suggestion obey and implement the suggestion if the party who rejected the suggestion not continuing the completing of the dispute to Industrial Relationship Court, then the mediator only can be completing the dispute, but can’t finish it. It is occurred because the legislation limiting the mediator role in completing the dispute by mediation.

**CONCLUSION AND SUGGESTION**

From the discussion above, so the writer can draw conclusion that mechanism of industrial relationship dispute through mediation effort in Employee Agencies Office of Papua Province basically already in accordance with the regulated provisions in Legislation No. 2 Year of 2004 about Completing the Industrial Relationship Dispute and the Regulation of Republic Indonesia Employee and Transmigration Minister No 17 Year of 2014 about Appointment and Dismissal of the Industrial Relationship Mediator and Rules of Mediation. But result of mediation in the form of written advice which is issued by the mediator sometimes not implemented by both of the parties whose are disagree, meanwhile the mediator sometimes not have authorization to do forcing effort against implementation of the written advice which is issued by those mediators. Therefore, if the written advice which is issued by the mediator after reunite the perception of the parties whose are disagree not implemented, then one of the party whose are disagree will be harmed.
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