

Low Position of Labour Unions in Conducting a Procedure At The Industrial Relations Court

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ABSTRACT: For conducting a procedure at the Industrial Relations Court (PHI), the union must complete the administrative requirements, such as a trade union certificate, record proof number, power of attorney, and membership card. However, the completeness of the administrative requirements alone does not guarantee that the union is acceptable for a law on the PHI. In many cases, there is still a union which has complete administrative requirements, but by the court is stated not to have legal standing to conduct a law in PHI. The formulation of the problem in this study were: 1) What is the regulation of union in labor law in Indonesia ?; 2) What is the legal position of trade unions in conducting a procedure at the Industrial Relations Court ?; 3) How is the consideration of the PHI Judge in interpreting the legal position of trade unions in the PHI Medan? Although the PPHI Law provides for legal standing for trade unions to conducting a procedure in PHI, in practice there is still a decision of the PHI Judge stating that the union has no legal standing to take a seat at the PHI. The reasons the judge prescribes in their legal considerations are: among others: the union does not have a work unit at the enterprise level, the form of union at the Regency / City level or the Province is not clearly a federation or confederation, and the power of attorney is given not tiered starting from the next work unit level given to the federation or confederation of the union.

Keywords: legal status; trade union; industrial relations court

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I. INTRODUCTION

The birth of Law no. 2 Year 2004 on Industrial Relations Dispute Settlement or abbreviated to the PPHI Law on 14 January 2014 and effective on January 14, 2006, has brought many changed, both in terms of institutional, mechanism and on the types or objects of industrial relations disputes. In 2006 the Indonesian labor community entered a new round of industrial relations dispute settlement procedures with the creation of a special court to handle, examine, hear and decide upon industrial relations disputes called the Industrial Relations Court or abbreviated to the PHI.¹

The PHI is a special court within the general court of law as regulated in Article 55 of the PPHI Law. The establishment of this special court is regulated in Article 27 of Law no. 48 of 2009 on Judicial Power and Article 8 paragraph (1) of Law no. 49 of 2009 on General Courts which determines that within the General Courts can be formed a special court regulated by law.²

The industrial relations dispute settlement system based on the provisions of the PPHI Law provides a certain role for the union. There are two main roles of trade unions, namely unions as labor lawyers and the role of Adhoc Judge from unions. While the author lift as the main topic in writing this thesis is the role of trade unions as labor lawyers Article 87 of the PPHI Law provides an opportunity for trade unions to act as legal representatives for a ceremony at the IRC to represent its members. In the Elucidation of Article 87 of the PPHI Law, it is stated that the meaning of union / labor union includes the management at the company level, the Regency / City level, the Provincial level and the Central either trade unions, Federation members or Confederates.

¹ Supomo Suparman, *Industrial Relations Court Proceedings, Procedures for Labor Dispute Settlement*, Jala Permata Perkasa, Jakarta, 2009, page. 14.

² Ugo & Pujiyo, *Industrial Dispute Resolution Settlement Procedure, Procedures and Labor Dispute Settlement Process*, Sinar Grafika, Jakarta, 2012, page. 91.

Thus, pursuant to Article 87 of this PPHI Law, trade unions ranging from the base / work unit to the national level have the right to become legal representatives for workers who are members, to conduct a law in the PHI. The Rule of Article 87 of the PPHI Law is in line with Article 25 paragraph (1) letter (b) of Law no. Law No. 21 of 2000 concerning pre-regulated labor / trade unions, in which it is stated that the trade union / labor union has the right to represent its members in resolving industrial relations disputes. Although the PPHI Law has authorized the union to conduct a trial, but in practice to become a legal counsel for workers is quite complicated, because there are still other requirements that must be met, such as the Confirmation Letter of the union, workers in the local Office of Manpower, power of attorney from worker to his organization and membership card. This technical-administrative requirement sometimes becomes a problem for workers when conducting a procedure in the PHI.³

In practice when conducting a procedure in the PHI, although administrative requirements have been completed by the union, it does not guarantee that the union is seamlessly acceptable for conducting a procedure in the PHI. In many cases, there were still a union which has complete administrative requirements as mentioned above, but the court declares that the union has no legal standing to conducting a procedure in the PHI so that the claimant's claim to the union is declared unenforceable be accepted.⁴

Based on data from PHI Medan, from 1153 cases that have been ruled by Justice of PHI Medan since March 2006 until December 2014, there were 549 cases with union lawyers and of that number there were 39 cases that have been terminated NO (Niet Ontvankelijk verklaard) by Justice PHI Medan, with the reason that the legal representation of the worker has no legal standing or is not authorized to be the legal representative of the workers to conducting a procedure in PHI Medan

About the decision of this legal standing decision can be seen in the Decision of PHI Medan no. 61 / G / 2007 / PHI Medan, between Sofian (dkk) represented by the Alliance of Indonesian Workers Union (ASPI) of North Sumatra against PT. Gunung Gahapi Sakti, Decision of PHI Medan no. 75 / G / 2007 / PHI Medan, between Faisal Lubis (dkk) represented by the power of the Federation of Chemical and Health (F KIKES) SBSI Kota Medan against PT. Madju Medan Cipta and Decision of PHI Medan no. 155 / G / 2007 / PHI Mdn, between Ahmad Ridwan (dkk) represented by the power of Federation of Trade Unions of the Republic of Indonesia (F SBRI) Deli Serdang Regency against PT. Tropical Wood Indotama. The legal considerations of the Panel of Justices of the PHI declare that the legal representative of the workers does not have the legal standing for conducting a procedure in PHI, the decision is declared unacceptable plaintiff claim (*Niet Ontvankelijkverklaard*).

Based on the above- reasons which encouraged the writer to conducted the research and discuss further on the legal standing of the union to conducting a procedure in PHI Medan under the PPHI Law.

II. THE METHOD OF THE RESEARCH

2.1 Types of the Research and Method Approach

The type of the research used in this study was empirical law research that is the type of research that analyzed and examined the workings of law in society. The approach method used in this research was the sociological juridical approach, the approach to law as a norm or rule, and approach to society in the sense of seeing the reality that exist in society.⁵

2.2 Nature of Research

The nature of this reserach was descriptive research that described or explained the existing legislation and is currently valid as a positive law.

2.3 The Location of the Research

The location of this research was in the Industrial Relations Court at the Medan District Court at Jalan Court no. 8 Medan.

2.4 Types and Sources of Data

Empirical law research data can be divided into two kinds, namely as follows:⁶

³ *Ibid.*, hal. 10.

⁴ *The Interview with Mangaraja Manurung, Adhoc PHI Judge at the Medan District Court, on September 30, 2015*

⁵ Suratman & Philips Dillah, *The Method of Legal Research, Equipped with Procedures & Examples of Writing Scientific Works Field of Law*, Alfabeta, Bandung, 2014, page. 229.

⁶ H. Salim HS & Erlies Septiana Nurbani, *Applied of Legal Theory In Thesis and Dissertation Research*, Raja Grafindo Persada, Jakarta, 2013, page. 25.

- a) Primary data; and
- b) Secondary data.

The primary data source in empirical legal research is derived from field data (field research). The field data were obtained from the respondents. While secondary data was data obtained from the results of library research (library research) or literature that has a relationship with the object of research.

2.5 The Technigues and Data Collection

The way of collecting data in this study is done with the following techniques:

To collect primary data, conducted through the observation and interviews are question and answer directly with respondents or resource persons. While to collect secondary data, conducted by studying the legislation, court decisions, especially the PHI decision on the Medan District Court, the results of research, the results of scientific work of legal experts and others.

2.6 The Medthod of Data Analysis

Data analysis in this research is done by using qualitative descriptive analysis, that is an analysis that explain or describe about the prevailing rules, then connected with reality that happened in society and finally taken conclusion.

III. RESULTS AND DISCUSSION

3.1 Trade Union Arrangement in Labor Law in Indonesia

Since the reform era of 1998, the Indonesian government has only recognized freedom of association that is with the ratification of ILO Convention No. 87 Regarding the Freedom of Association and Protection of the Right to Organize with Presidential Decree No. RI. 83 of 1998 on Ratification of ILO Convention No. 87 in the administration of President Habibie. The ratification of the ILO Convention comes just one week after Habibie took office as President. This was Habibie's first international policy immediately welcomed by workers activists.

In line with the demands of reform, the government and the House of Representatives (DPR) finally published of Law no. 21 of 2000 on Trade Unions or known by the Law of SP / SB which increasingly gives flexibility for workers in fighting for their interests and rights. The SP / SB law regulates more specifically the rights and obligations of trade unions, whether in the establishment of trade unions at the enterprise level, at the district / city level and so on, as well as on the right to bargain and collective bargaining. The law makes it easy for workers to establish and establish unions where in Article 5 paragraph (2) of the Act states that only 10 (ten) workers have been able to establish or form unions. With this rule it is possible for a company to be able to establish a multi-union, whether it has an organizational level on it or that is local or existing at the enterprise level. Other obligations imposed on the union are the requirement to put down / register the union to the local Office of Manpower as stipulated in the Decree of the Minister of Manpower and Transmigration. Kep. 16 / Men / 2001 on the Procedures of Registration of Trade Unions

In contrast to previous forms of trade unions which tend to be federated, the Act expressly determines unions in the form of federations and confederations. Article 6 paragraph (1) and (2) of the SP / SB Law states that:

- a. Trade unions have the right to form and become members of a federation of trade unions labor unions;
- b. Trade union / trade union federations shall be established by at least 5 (five) trade unions labor unions.

Furthermore, in Article 7 paragraph (1) and (2) of the SP / SB Law states that:

- a. Federation of trade unions / labor unions have the right to form and become members of a confederation of trade unions / labor unions;
- b. Confederation of trade / labor unions shall be established by at least 3 (three) trade union federations / trade unions.

Based on the provisions of the foregoing articles, it may be described that stand or establishment of trade unions at the enterprise level can only be made by the 10 (ten) workers proposal, while the formation of unions at the district / city level shall be federation or confederation. A new union federation may be established if there has been a firm-level enterprise union of at least 5 (five) work units, whereas a new trade union confederation may be established by at least 3 (three) trade union federations

The birth of the SP / SB Law, further coloring the development of trade union movement in Indonesia. In the new order regime the existence of unions recognized by the government is only one that is SPSI. Workers are not given the freedom to choose and decide which union they desire. Even if there are a handful of workers

who try to form unions outside the SPSI, of course, will get intimidation from employers and most likely will be sanctioned in the form of termination of employment.⁷

Despite the current freedom of association to have a positive impact on trade unions in carrying out their programs and activities, more freely and openly, the challenges facing trade unions in this period are also increasingly heavier and more complex. Not only about competition with fellow unions and efforts to improve the welfare of members, but also concerns the human resources of the union is still far from expectations. The enactment of Law no. 13 of 2003 on Manpower or known as the Manpower Law and the Law on PPHI, requires that Indonesian trade unions learn more. Both laws require union activists to put forward dispute settlement through negotiation programs rather than action programs. Negotiation requires the ability and skill in mastering and understanding the socio-cultural characteristics and societies as well as the rules of the legislation. The skills and shrewdness in negotiating will determine the success of today's trade union program.

3.2 The Legal Status of Trade Unions in conducting a procedure of the Industrial Relations Court

Law of PPHI gives special authority to the union that is in the form of legal standing for unions to conducting a procedure in the PHI. Article 87 of the PPHI Law states that trade / labor unions and employers' organizations may act as legal representatives for conducting a procedure in PHI to represent their members.

On Explanation of Article 87, it is stated that:

"The meaning of trade / labor unions as referred to in this article includes board at the enterprise level, district / municipality level, provincial and central levels, both unions / labor unions, federation members, or conferences

Thus, based on Article 87 of this PPHI Law, trade unions ranging from the base / work unit level to the national level have the right to become legal representatives of their members conducting a procedure in PHI. The Rule of Article 87 of the PPHI Law is in line with Article 25 paragraph (1) letter (b) of the SP / SB Law which has been regulated first, whereby it is stated that the trade union / labor union has the right to represent their members in resolving industrial relations disputes. What is stipulated in this law can indeed be regarded as a breakthrough, because this rule goes beyond Law no. 18 of 2003 on Advocates stipulating that only those who work as advocates alone can run the profession to provide legal services. When viewed from the previous P4P / P4D system, the role of trade unions as a legal representative for workers is not something new. According to Law no. 22 of 1957 on the Settlement of Labor Disputes only trade unions or the combined may be part to the dispute. This brings the consequence that individual workers are legally encouraged to enter and join trade unions. The existence of trade unions is very important to defend the interests of individual workers.⁸ Meanwhile, according to the PPHI Law, the existence of a union is not an absolute thing, since an individual worker is not necessarily represented by a union, he may appoint an advocate if desired, this brings the consequence that the union is merely a service institution, and that individual workers are not necessarily merged and organized in a union. In practice, many trade union officials are more like "advocates". Armed with a letter of appointment from the organization, supplemented by a power of attorney and a member card of the "client", that is the accompanied worker, then practicing the board at the PPHI.⁹

- a. At some stage, the practice of "advocates" by trade unionists can be understood and even deserved. One of the functions of the union is to defend their members who face legal issues where the court is one of its channels. Meanwhile, when legal assistance has become the main job, then the main task of union officials as the motor of the organization will be constrained. The board's working time has been spent solely for litigation at the Court, so the consolidation of the organization becomes neglected.
- b. Although the PPHI Law has authorized the union to conduct judicial proceedings, but in practice, to become a legal representative for workers is not easy, because there are several requirements that must be obeyed:
- c. 1) The existence of the certificate of union in question;
- d. 2) Record of records from the local Manpower Office;
- e. 3) Power of attorney from the worker concerned to his organization;

⁷ A.M. Syam Siregar, *The Role of SPSI in Operating the Industrial Relations of Pancasila, Vice Chairperson of KSPSI Sumatera Utara, presented in SPSI Basic Education, on 11 November 2008 in Medan, p. 6*

⁸ Surya Tjandra et al, *Op. Cit.*, hal. 9.

⁹ Sukirno, *Relationship of Trade Unions with PPHI, quoted from <http://www.kompas.com>. accessed on September 10, 2015.*

f. 4) Identification card of the worker and the authorized person.¹⁰

This administrative technical requirement sometimes prevents and often becomes a problem for workers when litigating in the PHI. Whereas in the P4D / P4P system, these administrative technical issues are never a requirement that must be obeyed.¹¹ The fulfillment of the administrative technical requirements as set forth above does not guarantee a union can be seamlessly accepted for conducting a procedure in PHI. Some cases prove that a union that fulfills the requirements is still only bite the fingers because the lawsuit is declared unacceptable or NO (Niet Ontvankelijk verklaard).¹² The unions "impromptu" are guerrilla-seeking klein among workers who are terminated. They are promised to fight for their rights to the court. To legitimize the membership status of the worker, a membership card is made according to the name of the union. Capitalize the member's sign card that the union officer takes the case to court. The formation of new unions done by some activists that formed at the district / city and at the provincial level, is often incompatible with the applicable labor law rules of the SP / SB Law. There is no clarity about the form of union, federation or confederation. Even if it is mentioned in the form of a federation or a confederation, it is merely a term, but can not be accounted for in accordance with the provisions of Article 7 paragraph (2) of the SP / SB Law.¹³

Indeed forming a union is the right of every person and the state constitution guarantees the freedom of every citizen to associate and assemble, to issue his thoughts with oral and written. This is stipulated in Article 28 of the 1945 Constitution. The SP / SB Law also gives freedom to everyone to form a workers' organization, but for the workers' organizations to be recognized by the government and to have legal standing before the law especially in PHI, there is no other word, its formation must comply with the provisions stipulated in the SP / SB Law.

3.3 Considerations of the PHI Judge in Interpreting the Legal Status of Trade Unions at the PHI Medan

As judicial organs, judges play an important role in upholding law and justice. Article 5 paragraph (1) of Law no. 48 of 2009 on Judicial Power, ordering judges in their positions as law enforcement and justice, shall explore, follow and understand the values of the living law in society. This article affirms that judges play a role and act as the framers and diggers of living values among the society.¹⁴ Viewing the law as a work, Gustav Radbruch mentions as the basic values of the law. The basic values of the law include: justice, utility and legal certainty.¹⁵ Although all three are the basic values of the law, but among them there is a tension to each other (spannungs-verhältnis). This is because the three basic values of law each have different demands of each other, so that all three have the potential to contradict each other. The basis of consideration of PHI judges in providing legal certainty to cases of industrial relations disputes is seen in its verdict, which, as has been previously explained, legal certainty, is a necessity of a regulation. Although the regulations on labor law are not collected in a codification, they can still provide a legal certainty. Seen in every consideration "remember" every legislation is always guided by the previous rules, so that the legal certainty is still there. When deciding a case, the judge shall still refer to the laws and regulations governing it, unless there is no legal arrangement, then the judge tries to find its own law.¹⁶

When analyzed by existing judicial decisions of the PHI, the judge's judicial consideration in interpreting the legal status of the union has provided justice, benefit and legal certainty to the litigants. This can be seen in the case No. 61 / G / 2007 / PHI Mdn, no. 75 / G / 2007 / PHI Mdn and no. 155 / G / 2007 / PHI Mdn. The final verdict of the cases states that the claimant's claim is unacceptable (Niet Ontvankelijk verklaard) or abbreviated as NO. An unacceptable lawsuit or NO means the suit is deemed not fulfillment the formal conditions (completeness) as a suit. Against this verdict can be filed a lawsuit again by fixing the file and

¹⁰ Interview with Mangaraja Manurung, Adhoc PHI Judge at the Medan District Court, on September 30, 2015..

¹¹ Sukirno, *Loc.Cit.*

¹² Interview with Nurmasyah, Adhoc PHI Judge at the Medan District Court, on September 31, 2015.

¹³ Interview with Mangaraja Manurung, Adhoc PHI Judge at the Medan District Court, on September 30, 2015.

¹⁴ M. Yahya Harahap, *Civil Procedure Law on Claims, Trials, Foreclosures, Verification and Judgment of Courts*, Sinar Grafika, Jakarta, 2006, hal. 798.

¹⁵ Muchsin, *Legal Theory, Adhoc Judicial Education Paper PHI, Supreme Court Justice, Jakarta, October 11, 2006, p. 11.*

¹⁶ *Ibid.*, hal. 17.

formulation in the lawsuit.¹⁷ The non-fulfillment of a formal requirement of a lawsuit may be due to several matters such as:¹⁸

1. Plaintiff's lawsuit is obscure (Obscur Libel);
2. The wrong party's lawsuit (Error In Persona);
3. Lawsuit against the same case (Ne Bis In Idem);
4. The plaintiff's power of attorney is not valid;
5. Plaintiff's power is not authorized;

What is said to be a formal requirement and substansil a lawsuit is the initial framework of a lawsuit. Like a bone that sustains the body, the framework of the lawsuit needs to be "flesh" or "content" in order to become a complete lawsuit. This "flesh" is the proof of one's skill in pouring the thoughts and feelings of a case, in a lawsuit. This skill can be honed through writing exercises. So for the fellow workers who want to be adept at putting together a lawsuit, there is no other word, other than learning.¹⁹

Based on Judge verdict of PHI Medan in case no. 61 / G / 2007 / PHI Mdn, No. 75 / G / 2007 / PHI Mdn and no. 155 / G / 2007 / PHI Mdn, the basis of judges' consideration in deciding the case is related to the authority of the plaintiff's power from the union. The judge of the union's representation acting as the plaintiff's power does not have the legal standing to conducting a rocedure in PHI Medan. The existence of the union that is the plaintiff's power is not in accordance with the provisions stipulated in the SP / SB Law.

Article 87 of the PPHI Law does give legal standing for the union to conducting a procedure in PHI Medan. However, it is not necessarily a standing union to act as a workers' legal representative for conducting a procedure in PHI Medan. Unions whose process of establishment is in accordance with the mechanism set forth in the UU SP / SB, which has legal standing to conducting a procedure in PHI Medan while for unions whose process of formation is inconsistent with the provisions of the SP / SB Law, legal standing) to conducting a procedure in PHI Medan.

The legal standing of the PHI applies to enterprise-level unions, federal or provincial and federal unions at the provincial and central level in the form of federations or confederations. The SP / SB law provides that to establish a federation of trade unions at least formed by 5 (five) enterprise-level unions and to establish a union confederation at least constituted by 3 (three) trade union federations.

Other considerations used by the PHI Judge on the legal standing of a union having the authority of a worker's legal representative is a company-level union or work unit because the member is a company-level union, not a federation or confederation. Members of the federation are enterprise-level unions while members of the confederation are federations of trade unions. Thus a federation or confederation can not directly act as a workers' legal representative, but a federation or confederation may act as a worker's attorney by first obtaining a power of attorney from a company-level union.²⁰

This can be seen in the Decision of the Supreme Court of the Republic of Indonesia Number 292 K / PHI / 2007 dated August 14, 2007 which states:

That workers' membership in a workers' organization is only organized and recorded on a union / labor union in the workplace / work unit; That for a worker / laborer can not directly become a membership of a trade union / trade union federation because the membership of a trade union / labor union is a non-worker union / labor union organization;

Based on the aforementioned Decision of the Supreme Court of the Republic of Indonesia, a worker can not directly authorize the federation or confederation of the union, but the power of attorney must be granted in advance to the work unit / union at the enterprise level. Whereas enterprise-level unions may act as legal representatives of their members or may be accompanied by federations or confederations or may also authorize the federation or confederation.

If there is no standing union in a company, the Supreme Court's decision above has limited that dispute settlement that occurs to workers in the company can not be authorized to the union to resolve it in the PHI. A union is limited only to become a legal representative for its members only. Membership of a person to a union is only in the company's work unit / union. A worker can not directly become a member of a federation or confederation of trade unions. Members of the trade union federation are the administrators of the enterprise unit / labor union and who are members of a union confederation are trade union federations

¹⁷ Yahya Harahap, *Op.Cit.*, hal. 428.

¹⁸ *Ibid.*, hal. 436-448.

¹⁹ Surya Tjandra et al, *Op.Cit.* hal. 23.

²⁰ *Interview with Mangaraja Manurung, Adhoc PHI Judge at the Medan District Court, on September 30, 2015*

The decision of this PHI Judge is a legal interpretation and can be regarded as a breakthrough. This is because the rules of legislation have not been explicitly regulating the existence of trade unions that have legal standing (legal standing) to conduct a law in the PHI. Such a judgment is useful to provide justice for trade unions that are fully established in accordance with the applicable law and provide legal certainty for the parties, especially the union.

IV. CONCLUSION

The birth of the SP / SB Law at the beginning of the reformation makes it easier for workers to form and establish trade unions, which are supported only by at least 10 (ten) workers only, have been able to form unions in a company. Unions that have been formed shall be registered / registered in the local Office of Manpower as stipulated in the Decree of the Minister of Manpower and Transmigration. Kep. 16 / Men / 2001 on the Procedures of Registration of Trade Unions. The birth of PPHI Law, which came into effect in 2006, further strengthens the existence of trade unions in Indonesia. This law gives new appreciation to trade unions, by giving legal standing to the union for conducting a procedure in PHI Medan. To have legal standing in the PHI, the union must have a letter of inauguration, a letter of registration, a membership card and a letter of authorization from the worker concerned. The interpretation of the PHI Judge concerning the legal standing of the union as outlined in Article 87 of the PPHI Law in conjunction with Article 5 paragraph (2) in conjunction with Article 6 paragraph (2) jo Article 7 paragraph (2) of the SP / SB Law, is that the union which has the legal standing to be able to hold a law in the PHI is a company-level union established and established at the company or a county / city union provincial and federal levels in the form of federations or confederations which receive power from enterprise-level unions, thereby individual workers can not directly authorize federations or confederations of trade unions, but power of attorney shall be granted in stages starting from the level work unit / union at the enterprise level and subsequently enterprise-level work units / unions that can provide power of attorney to the federation or confederation of trade unions. If a company has not established a union, the worker can not authorize the union administrator to conducting a procedure in PHI Medan.

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