INDUSTRIAL RELATIONS SERIES

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FOREWORD

The rule on industrial relations has been regulated through manpower laws and regulations, and more details of the rule on rights and obligations of workers and employers known as working conditions are regulated in the form of Work Agreement, Company Regulations, or Collective Labor Agreement. However, in practice dispute between worker and employer still arise or dispute among trade unions in one company is hard to avoid. The industrial relations dispute basically can be understood, due to there are two interest which not always in harmony, so it can cause a dispute.

To give legal certainty for the industrial relations dispute settlement, it is deemed necessary to formulate an act in accordance with the recent development. Therefore, on 16 December 2003, Indonesian Parliament has agreed the bill on Industrial Relations Dispute Settlement to become the Act. Through this Act, it is expected to support the growth and improvement of business, as an effort in the economic field, so hopefully can open job opportunity for the unemployment persons that reach less 38.9 million, in which if the unemployment is not handled seriously, the number of unemployment will be bigger compare to the economic growth. In other hand, the workers' welfare will be improved, because without business expansion, the workers' welfare will be difficult to increase.

Through the Industrial Relations Dispute Settlement Act, there is a basic change of paradigm, in which the industrial relations dispute settlement divided into two: outside the court through mediation, conciliation, and arbitration institutions with the monitoring and implementation under the responsible Minister in the field of manpower), and inside the special court within the general court.

Especially for the industrial relations dispute outside the court, Mediator

that previously known as *Hubinsyaker* Technical Officials or Mediate Officials shall be more professional in doing their job and function. As the counselor of industrial relations and to settle the dispute, mediator should have capability and willingness to explore fair value in implementing industrial relations at the company.

If the above matters have not done, then the parties to the industrial relations dispute will tend to choose conciliation or arbitration institutions. Therefore, the technical officials of industrial relations that will become mediators should improve their professionalism through the knowledge improvement such as law, economic, social, and others that related to industrial relations. The judgment of the professionalism will be determined by the industrial relations society such as the number of settled cases through Collective Agreement and the number of settled cases through Industrial Relations Court and Supreme Court in line with the recommendation of the Mediator. If such thing happen, in the future the parties will accept the Mediator with condition, for instance the parties will refuse to be mediated by Mediator A.

In this opportunity, we need to say that this book is not an academic paper, but more to as an introduction for us to support the comprehensive review in the industrial relations dispute settlement in Indonesia. Finally, we would like to convey our appreciation and gratitude to the ILO/USA Declaration project for making the publication of this book possible. May the good cooperation between ILO (especially ILO Jakarta) and the Government of the Republic of Indonesia (especially Ministry of Manpower and Transmigration) to promote sound industrial relations in Indonesia be further nurtured and enhanced.

I hope this book will be beneficial for the manpower laws development in Indonesia. Thank you.

Jakarta, January 2005

Muzni Tambusai

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Seri 1

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LEGAL CERTAINTY

INTRODUCTION

In frame of realizing a harmony, dynamic, and fair industrial relations, arising of industrial relations dispute in a company is sometime difficult to be avoided. It is understood, because interests of entrepreneur and workers are sometime not in a harmony and even generate dispute impacting to society widely.

In order to perform the reform demand especially in legal sector, the Government and the Parliament perform a legal reform on manpower affairs through the Manpower Act Number 13 Year 2003 which has been effective since March 25, 2003. The Act is classified as Substantial Law of manpower affairs.

Manpower Act needs to be accompanied by the Industrial Relations Dispute Settlement Act that have been just approved by the Parliament of the Republic of Indonesia in its plenary session held on November 16, 2003. We may call the later act as a formal law of the Manpower Act. The Industrial Relation Disputes Settlement Act constitutes the substitution of Act Number 22 Year 19957 on the Settlement of Labor Disputes and Act Number 12 Year 1964 on Termination of Working Relations at Private Company.

The Industrial Relation Disputes Settlement and the Termination of Working Relations by Act Number 22 Year 1957 and Act Number 12 Year 1964 with enactment Act Number 5 Year 1986 on the State Administrative Court, the decision of Regional/Central Committee (P4P/D) shall not bind and be enforced. Since in case of the parties (Workers/laborers, worker/labor union or entrepreneur) disagree with the decision of Regional/Central P4 (the Committee of Labor Disputes Settlement) may file claim to the State

Administrative Court or the State Administrative High Court. Accordingly, the Industrial Relation Disputes Settlement Act having been just legalized by the Parliament of the Republic of Indonesia gives legal certainty, so settlement of industrial relations dispute can be undertaken fast and fairly.

THE SETTLEMENT OF INDUSTRIAL RELATIONS DISPUTES

Pursuant to technology and science modernizations and reformation demand, the settlement of industrial relation disputes being undertaken through the Act Number 22 Year 1957 is assumed not giving time certainty in process of such settlement since Mediation level, Regional Committee, Central Committee until the Supreme Court. The enactment of Act Number 5 Year 1986 on State Administrative Court results the settlement requires approximately 2 – 3 years. It is not efficient in an effort to improve the company productivity.

Through the Industrial Relation Disputes Settlement Act, time restriction to settle any dispute on any institution chosen by parties is regulated strictly. The maximum time for settlement is at least within 40 days through mediation, conciliation and arbitration (as stipulated in Article 16, Article 24 and Article 38 of Act Number 2 Year 2004). The settlement through Labor Court at the District Court as the first level should be settled at least within 50 working days and at the Supreme Court level at least within 30 working days.

If we view on dispute types, there are right dispute, interest dispute, termination of working relation dispute and dispute between worker/labor unions within one company. From the 4 types of dispute, it is limited which disputes may be appealed to the Supreme Court, namely right dispute and termination of working relation dispute, for interest dispute and dispute between worker/labor unions within one company are settled in Labor Court for first and final level settlement.

In view of disputing parties, except termination of working relation dispute, disputing parties pursuant to Act Number 22 Year 1957 are Worker/ Labor Union and Entrepreneur. In accordance to the Act Number 21 Year 2000 on Worker/Labor Union, it is free to be or not to be a member of

Worker/Labor Union. Therefore according to the Act Number 22 Year 1957, an individual or not become the member of a Worker/Labor Union cannot be the disputing party at the Regional Committee or Central Committee.

However, according to the Industrial Relations Dispute Settlement Act, the disputing parties include individual worker.

The Government role in Manpower affairs pursuant to Act Number 13 Year 2003 is regulated clearly, i.e., has functions to decide policy in providing service, monitoring and punishing against violation of manpower laws and regulations. The Government, in the frame of implementing of the Industrial Relations Disputes Settlement Act, is still responsible in the case of any settlement of industrial relations disputes on bipartite level does not reach agreement, one party or the both parties should registered such disputes to the authorized institution of manpower affairs. The authorized institution of manpower affairs suggests the both parties to settle their disputes through a conciliation or arbitration. In the case of they do not agree with such suggestion, they may choose a mediator to settle their disputes. In this case the Government is independent but it is not meant to get rid of its responsibility in settling the industrial relations affair disputes, but it is in accordance to its function as mentioned above. The Government involvement in settling disputes as regulated by Act Number 22 Year 1957 makes the role of Regional/Central Committee decision is assumed as decision of State Administrator, so it becomes the object for the Administrative Court.

LEGAL CERTAINTY

In order to give legal certainty of business and working in Indonesia, it needs legal instruments as a guide, by the legal certainty it will encourage a harmonize, dynamic and fair industrial relations then motivates the entrepreneur to hold a business expansion/extension and improve their workers' prosperity as well a wide job-opportunity will be opened as an attempt to reduce unemployment.

Through the Dispute Settlement Act, we hope that a legal certainty can be realized, due to the composition of the Judges at the Labor Court and the Supreme Court consists of Carrier Judges and Ad Hoc Judges. Carrier Judges and the Supreme Court are expected to give legal certainty and justice for all parties in their decision.

CLOSING

Through the Industrial Relations Dispute Settlement Act, we hope that legal certainty can be realized to implement the rights and obligation of entrepreneur and workers in company. Therefore disputing parties may choose freely to settle their disputes through institution of conciliation, arbitration, mediation or Labor Court and will increase productivity and at the end will increase the welfare of workers as well as encourage the business improvement in Indonesia. Finally, we hope that the hard-working attempted by the Government and the Parliament during the discussion process involving elements of entrepreneurs and workers will be useful in frame of developing the implementation of the laws on manpower affairs in Indonesia.

SERI 2

INDUSTRIAL RELATIONS DISPUTE SETTLEMENT

CHAPTER I
INTRODUCTION

The implementation of an economic development realizing a fair and prosperous society as mandated by the Indonesian Constitution of 1945 is hard to be realized without conductive condition for investment in the form business expansion or new investment. One of the sectors needs to be improved is manpower affairs, in which role of Human Resources – in this case is workers/laborers- is very dominant. Therefore, without the harmonious and dynamic cooperation between workers/laborers and entrepreneur, it is hard to achieve the business development and society prosperity improvement. In order to perform the cooperation between workers/laborers and entrepreneur, it needs legal instrument which can assure the execution of right and obligation among the actors of the production process of goods and service.

In performing such working relations, any dispute arising between worker and entrepreneur is difficult to prevent, although regulation on right and obligation is clearly regulated in manpower laws, and even strictly described and detailed in Working Agreement, Company Regulations and Collective Labor Agreement. The dispute arising between worker and entrepreneur or among Worker/Labour Unions is essentially understandable, due to disharmonize interests; hence we need a regulation which regulates dispute settlement between them in a company.

In the industrial era on the advance of knowledge and information technology, the dispute on industrial relations becomes more complex, hence we need an institution to support dispute settlement mechanism which is fast, precise, fair and inexpensive. Act No. 22 Year 1957 on Termination of Working Relations in Private Company does no longer appropriate with the development of condition and the above needs.

Therefore, the Government and Parliament recently discussed and approved a bill on Industrial Relations Dispute Settlement to become Act with the following background:

First, since the Act No. 5 Year 1986 on Administration Court was enacted, decision of P4P that was originally final in nature, by the party that cannot accept the decision may be filed an appeal to the Administration High Court, which afterward may apply for Cassation to the Supreme Court. The process needs a long period and not suitable to be implemented in manpower affair case (industrial relations) which needs a fast settlement since related to the production process and work relations.

P4D/P4P is well known as "quasi-court" means the institution is authorized to "decide "cases in industrial relations, but "quasi" means the institution is not a judicature institution as meant in Act No.14 Year 1970 regarding Principles of Judiciary Authority. The P4D/P4D contains the Government representation, based on such condition its decision is categorized as decision of administration officer which can be an object of State Administration Court.

Second, the Minister authority to postpone and cancel the decision of P4P namely Veto Right. The Veto Right constitutes a Government involvement, and it is not appropriate to the new paradigm in society, in which the government role should be reduced.

Third, Act No. 22 Year 1957 states that the party in dispute settlement of industrial relations is only worker union/labour union. By enactment of Act No. 21 Year 2000 on Worker Union/Labour Union being spirited by ILO Convention No. 87 on Freedom of Association and Protection of Right to Bargain having been ratified by Indonesia, hence open a chance for every worker/laborer to form/participate in a preference organization. In the other hand the worker/labourer right to not organize shall be appreciated.

In light of the above, Act No.22 Year 1957 required that the disputing party shall be worker/labor union is not appropriate to the new paradigm of industrial relations ,i.e., democratisation at the workplace.

If the Act No.22 Year 1957 is still persisted hence the individual worker/laborer may only "litigate" before general court with civil session.

The drafting of industrial relations dispute settlement act is based on

the following rationales:

1. Regulation on industrial relations dispute settlement applied in private companies and the State Owned Companies.
2. Disputing parties are individual worker or Worker/Labor Union versus entrepreneur or entrepreneur organization and between Worker/Labor unions of a company.
3. Industrial Relations Dispute Settlement shall be made firstly through a discussion between disputing parties to achieve an agreed decision.
4. If the bipartite discussion fails to achieve agreement, one party or both parties register the dispute to the local authorized institution on manpower affairs.
5. The authorized institution on manpower affairs offers the disputing parties to settle their dispute through a Conciliation or Arbitration. If the parties disagree with this mechanism, before file to the Labor Court, the dispute shall be settled through Mediation in order to avoid bulk of cases in the Labor Court.
6. Right dispute can not be settled by Conciliation or Arbitration but before file to the Labor Court, the settlement shall be made through mediation.
7. If a settlement made through mediation or Conciliation cannot reach agreement, one of the parties may file the lawsuit to the Labor Court.
8. Industrial Relations Dispute Settlement made through Arbitration, can not file the lawsuit to the Labor Court due to the Arbitration decision id final and binding in nature. However, in certain cases the decision may be applied for re-review through the Supreme Court.
9. Labor Court exists in general court environment and gradually will be established in the District Court and in the Supreme Court.
10. In order to ensure fast, precise, fair and inexpensive settlement, the process of Industrial Relations Dispute Settlement shall be limited by not giving a chance to file an appeal to High Court. However, cases related to the right dispute and termination of working relations, it may directly file a cassation to the Supreme Court, and cases related to the interest dispute and dispute between Worker/Labour Unions in one company, the decision of the Labor Court is the first and final level and cassation can not be filed to the Supreme Court.

11. Labor Court examines the industrial relations dispute performed by judges tribunal consists of three (3) judges namely: one (1) District Court judge and two (2) Ad-Hoc judges whose appointment are proposed by entrepreneur organization and Worker/Labor Union Organization.
12. to enforce the laws, witnesses are determined as a stronger forcing element for legal compliance.

Furthermore, this book will discuss the industrial relations dispute and the disputing parties. But firstly it defines the principles of dispute settlement, industrial relations dispute settlement which is divided into two groups namely outside the court and Labor Court within the General Court, administrative sanction and closing consisting of transition provisions of the Industrial Relations Dispute Settlement Act.

CHAPTER II
PRINCIPLES OF DISPUTE SETTLEMENT

Industrial Relations Dispute Settlement Act as regulated in Act No. 13 Year 2003 on Manpower, industrial relations dispute settlement contains the following principles:

1. Deliberation to Reach Consensus

Industrial relations dispute settlement shall be carried out through a bipartite discussion for consensus and it is obliged to be made before further stepping settlement. The settlement outside the court shall be carried out also in deliberation to reach consensus.

2. Free to Choose a Dispute Settlement Institution

To settle industrial relations dispute, based on their agreement, the parties shall be free to choose the settlement method whether through Arbitration, Conciliation or Mediation before filing lawsuit to the Labor Court.

3. Fast, Fair and Inexpensive

The dispute settlement through the Labor Court has principles of fast, fair and inexpensive. The principles can be seen from settlement time: 30 days for bipartite and 30 work days for settlement through Arbitration, Conciliation or Mediation. If the parties/party cannot accept the advice of Conciliation or Mediation, the parties/party may file the lawsuit to Labor Court. Settlement time of the Labor Court is 50 working days, and the decision of interest dispute and between worker/labour union shall be final.

With regards to right dispute and termination of work relations, the parties/party may file cassation to the Supreme Court if they cannot accept the decision of the Labor Court. The Supreme Court shall take the decision within 30 working days.

Beside the time efficiency, the Act gives opportunity to the parties to request an interval decision and a fast session examination in order to accelerate the lawsuit examination.

Fair principle is reflected from the settlement made trough deliberation, and the decisions of the Labor Court and the Supreme Court made by Board of Judges consisting of Career Judge and Ad-Hoc Judge shall reflect the sense of justice.

Inexpensive principle means that the litigation process in the Labor Court shall not be charged for the execution of lawsuit claim under Rp. 150.000.000, - , constrain to appeal to the High Court, and limitation of industrial relation dispute to be made Cassation to the Supreme Court.

CHAPTER III
INDUSTRIAL RELATIONS DISPUTE

Industrial relations dispute is a difference of opinion that results in a conflict between an entrepreneur or an association of entrepreneur and a worker/labourer of a trade/labor union because of dispute over rights, interests and termination of employment and dispute between a trade/labor union and another trade/labor union in a one company.

From the above definition we may view that:

1. Objects of Industrial Relations Dispute are:

Right dispute, a dispute arising due to non-fulfilled right as consequence of difference of performance or interpretation against the provisions of laws and legislations, working agreement, company regulations or collective labor agreement.

Interest dispute, a dispute arising in working relations due to difference of interpretation regarding the drafting and or amendment of working condition determined in working agreement or company regulations or collective labour agreement.

Employment termination dispute is a dispute arising due to difference of interpretation regarding the employment termination made by one of the parties.

Dispute between worker/labor unions is a dispute arising between a worker/labour union and another worker/labour union in one company, due to difference of interpretation regarding the membership, performance of right and obligation of the worker/labor union.

2. Subject of Industrial Relations Dispute

Subjects and parties that may litigate are:

a) Entrepreneur, or entrepreneur association;
b) Individual worker/labor ;
c) Worker/labor union ;
d) Social business and other businesses in the form of non-company but has management, employs people and pay wages.

CHAPTER IV
INDUSTRIAL RELATIONS DISPUTE SETTLEMENT

Industrial Relations Dispute Settlement Act contains settlement outside the court and through Industrial Relations Court (Labor Court). The arrangement is meant to prevent transfer of dispute to the court. Due to the industrial relations dispute settlement prefers win-win-solution settlement that is through a deliberation to reach consensus. With hope that the industrial relations disputes shall not disturb production process of goods or service in the company.

1. SETTLEMENT OUTSIDE THE COURT

Industrial relations dispute settlement through the Industrial Relations Court. The claimant shall attach settlement minutes made through Mediation or Conciliation. If the application is not attaching the settlement minutes, the Judge must return the lawsuit application to the claimant.

In light of the above, we conclude that the industrial relations dispute settlement outside the court is made through an institution or by mechanism follows:

a. Bipartite;

b. Mediation ;

c. Conciliation ;

d. Arbitration.

a. Settlement Through Bipartite Mechanism

The settlement through bipartite negotiation mechanism is a discussion held between worker/labor or worker/labor union and entrepreneur to settle dispute on industrial relations. It is different with Bipartite Cooperation Institution as meant in Act No.13 Year 2003 on Manpower in which Bipartite Cooperate Institution constitutes a forum of communication and consultation regarding issues related to industrial relations in a company which its member consists of entrepreneur and worker/labor union having registered on authorized institution responsible of manpower affairs or worker/labor element.

The settlement made through a bipartite negotiation is an obligation, in case of one of the party or parties register their dispute to authorized institution responsible of manpower affairs without attaching evidence that the bipartite settlement has been made; the institution shall return the application in order to be completed.

The bipartite negotiation shall be settled within thirty (30) working days since commencement of the discussion and every discussion shall be reported in a minute at least consisting of:

a. Complete name and address of the parties ;
b. Date and place of the discussion ;
c. Points of issues or dispute reasons ;
d. Opinions from the parties ;
e. Conclusion or discussion result ; and
f. Date and signatures of the parties.

If the settlement through a discussion as meant above is reached an agreement, a Collective Agreement must be signed by the parties, the Agreement is binding and becoming a law and is obligated to be implemented by the parties.

For implementation purpose, the parties are obligated to register the Agreement to the Industrial Relations Court at the District Court where the parties enter into the Collective Agreement and then the Industrial Relations Court provides "Registry Evidence Deed of the Collective Agreement" which constitutes an integral part of the Collective Agreement.

Through the Registry Evidence Deed of the Collective Agreement, the party suffering loss may file the application of execution to the Industrial Relations Court at the District Court where the Collective Agreement is registered to obtain execution decision.

b. Settlement Through Mediation

Industrial Relations Mediation hereinafter called as Mediation is the settlement of disputes over rights, interest, employment termination, and dispute between worker/labor unions in one company through a discussion mediated by one or more neutral mediator(s).

Mediator is a government official responsible in manpower affairs that fulfilled requirements as mediator as stipulated by the Minister to perform mediation tasks and obligates to provide written recommendation to the disputing parties to settle the disputes over rights, interest, employment termination, and dispute between worker/labor unions in one company.

Mediator exists in every manpower office at the Regent/City level and should fulfil the following requirements:

a. believe and subservient to God Almighty;
b. Indonesian citizen;
c. Physically healthy according to a doctor's certificate;
d. Mastering manpower laws and regulations;
e. Has dignity, honesty, fair and good reputation;
f. Has a level of education of at least university or bachelor degree (S1); and
g. Other requirements as determined by the Minister.

The settlement through mediation prefers deliberation to reach a consensus, and if the discussion reached an agreement, a Collective Agreement shall be signed by the parties and witnessed by the Mediator, and registered to the Industrial Relations Court to obtain registration evidence deed.

If the settlement through mediation is not reached an agreement, the next process follows:

a. Mediator issues a written recommendation as an opinion or suggestion

to be proposed by the Mediator to the parties an effort to settle their dispute;

b. Such recommendation, at least within 10 working days since the first mediation hearing, shall be conveyed to the parties;
c. The parties must give written responses to the Mediator regarding their approval or rejection al least 10 working days since the receipt of the recommendation;
d. The parties who does not response shall be deemed has rejected the recommendation;
e. However, if the parties agree with the recommendation, within 3 working days since the recommendation approved, Mediator shall complete the assistance to the parties in making the Collective Agreement to be registered to the Industrial Relations Court to obtain registration evidence deed.

In total, the settlement through mediation shall be completed within 30 working days since the transfer acceptance.

Basically, the industrial relations dispute settlement through mediation is obligatory, in case the authorized institution responsible in the manpower affairs offers to the disputing parties to not choose Conciliation of Arbitration Institution to settle the dispute.

c. Settlement Through Conciliation

Industrial relations conciliation hereinafter called as conciliation is the disputes over interest, employment termination, and dispute between worker/labor unions in one company that mediate by one or more neutral conciliator (s). The conciliator is a person who fulfilled the requirements as conciliator as determined by the Minister, whose duty is to conciliate and must provide written recommendation to the disputing parties to settle the disputes over rights, employment termination, and dispute between worker/labor unions in one company..

Conciliator can conciliate if they have registered at the authorized institution responsible for manpower affairs at the Regent/City. The requirements to be a conciliator are:

a. believe and subservient to God Almighty;
b. Indonesian citizen;
c. Minimal 45 years of age;
d. Has a level of education of at least university or bachelor degree (S1);
e. Physically healthy according to a doctor's certificate;
f. Has dignity, honesty, fair and good reputation;
g. Has experience in the industrial relations for at least 5 (five) years;
h. Mastering manpower laws and regulations; and
i. Other requirements as determined by the Minister.

The settlement through conciliation shall be based on a written agreement from the disputing parties to be settling the dispute by the Conciliator. The parties may know the Conciliator's name to be chosen and agreed from the Conciliators list set and announced at the local Government Institution Office responsible for manpower affairs.

Conciliator settles the industrial relations dispute, principally through a deliberation to reach consensus. After the discussion and reached an agreement, a Collective Agreement shall be signed by the parties and witnessed by the Conciliator and registered to the Industrial Relation Court to obtain registration evidence deed.

At the contrary, if the parties do not reach agreement:

a. The Conciliator issues a written recommendation;
b. Within 10 working days since the first conciliation hearing, the written recommendation shall be conveyed to the parties ;
c. The parties shall have given written answer to the conciliator contain approval and willingness to perform the recommendation within 10 working days after receipt of the recommendation;
d. The party who is not giving the answer or its opinion is deemed to reject the recommendation;
e. If the parties agree with the Conciliator's recommendation, within 3 working days since the recommendation is agreed, the Conciliator shall have finished to assist the parties in making a Collective Agreement to be registered at Industrial Relation Court to obtain registration evidence deed;

f. The industrial relations dispute settlement through Conciliation Institution can be performed within 30 work days since the application received.

d. Settlement Through Arbitration

Industrial Relation Arbitration hereinafter called as arbitration is settlement of an interest dispute, dispute between Worker/Labour Union in one company, outside the Industrial Relation Court through a written agreement from the disputing parties to get dispute settlement to arbitration whose decision is binding and final in nature.

Arbitrator is one or more persons appointed by the disputing parties from an Arbitrators list stipulated by Minister to give a decision on interest dispute and dispute between Worker/Labour Union in one company to settle dispute through Arbitration whose decision is binding and final in nature.

Therefore, the requirements to be appointed as Arbitrator follow:

a. Believing in and subservient to the God Almighty;
b. Competent to do legal actions;
c. Indonesian citizen;
d. Has a level of education of at least university or Bachelor degree (S1);
e. Minimum 45 years of age;
f. Physically healthy according to a doctor's certificate;
g. Mastering manpower laws and regulations as proven by a certificate or a proof of passing evidence of an arbitration examination; and
h. Has at least 5 years experience in the field of industrial relations.

Industrial relations dispute settlement through arbitration is conducted based on an agreement of the disputing parties. The agreement shall be in form of Arbitration Agreement, made in three (3) counterparts and each party holds one (1) counterpart having the same legal force.

The Arbitration Agreement at least consists of:

a Full name and address or domicile of the disputing parties;
b Main Issues being disputed and issues being submitted to arbitration to be settled and decided;

c Number of approved arbitrators;

d Statements from the disputing parties to obey and execute the arbitration decision;

e Date and place of the agreement, and signatures of the disputing parties.

Appointment of Arbitrator may be conducted through a single or tribunal Arbitrators at maximal three (3) persons.

For appointment of a single Arbitrator, the parties shall have agreed with the Arbitrator's name within seven (7) working days.

However, if they designate some Arbitrators (tribunal) comprising of odd number, each party is entitled to elect an arbitrator within three (3) working days, the third arbitrator acting as the Chairman is elected by the appointed Arbitrators within seven (7) working days, since their appointment.

The arbitrator appointment as meant above is made in writing and in form of Arbitrator Appointment Agreement and between the disputing parties. The Arbitrator Appointment Agreement at least consists of:

a Full name and address or domicile of the disputing parties and the Arbitrators;

b Main issues being disputed and issue being submitted to arbitration to be settled and decided;

c Arbitration fee and Arbitrator honorarium;

d Statements from the disputing parties to obey and execute the arbitration decision;

e Date and place of the agreement, and signatures of the disputing parties;

f Statement from arbitrator or arbitrators that they will not act beyond the authority in settling the handled case; and

g Not having blood-family relations or relations by marriage until the second degree with one of the disputing parties.

If the disputing parties are not agree to appoint single arbitrator or arbitrators, based on the request of a party the Court Head may appoint one arbitrator from an arbitrators list stipulated by Minister.

The appointed arbitrator then informs his approval on the appointment to the disputing parties in writing.

If the industrial relations dispute settlement by arbitration, the arbitrator shall attempt to reconcile the disputing parties. If there is an agreement, the arbitrator or the arbitrator tribunal shall be obligated to issue a Settlement Deed signed by the disputing parties and the arbitrator or arbitrator tribunal.

The Settlement Deed shall be registered to the Industrial Relations Court at the District Court where the arbitrator holds the settlement to obtain Registration Evidence Deed as the basis for execution application to the Industrial Relations Court at the District Court where the Decision made in case of the Settlement Deed is not implemented by one of the parties.

The effort to reconcile is sometimes fail, then the arbitrator or arbitrator tribunal continues the arbitration hearing in close session, except the disputing parties agree otherwise, in which every proceeding shall be made an examination minutes by the arbitrator or the arbitrator tribunal.

If all proceedings regarding the industrial relations dispute are deemed sufficient by the arbitrator or arbitrator tribunal, the arbitrator or arbitrator tribunal shall take decision based on the existing laws and regulations, agreement, custom, justice and public interest.

The arbitration decision contains:

a. Head of decision stating " For Justice Based on the One God Almighty";
b. Full name and address of the arbitrator or arbitrator tribunal;
c. Full name and addresses of the parties ;
d. Matters contained in the agreement made by the disputing parties;
e. Overview of the claim, response, and further explanations from the disputing parties;
f. Considerations underlying the decision ;
g. Main decision;
h. Place and date of the decision;
i. Effective date of the decision;
j. Signature of the arbitrator or arbitrator tribunal.

The arbitration decision is binding to the disputing parties and has final and definite in nature. Such decision shall be registered to the Industrial Relations Court at the District Court. To the arbitrator decision which is not executed by the party, the suffering party may file an execution petition through the Industrial Relations Court at the District Court which jurisdiction covers the address of the party whom the decision shall be executed, in order that the decision is executed. The District Court within 30 working days shall have accomplished the order to perform the execution since the execution petition is registered to the District Court Registrar without examining the reason or consideration of the arbitration decision.

One of the party who is not agree with the arbitration decision may file a cancellation petition to the Supreme Court within 30 working day since the arbitration decision, if the decision is deemed containing the following elements:

a. The documents submitted in the proceedings, after the decision made is confessed / stated to be forged;
b. After the decision made, it is found determining document being hidden by the other party;
c. The decision is taken from deception made by one of the parties in the proceedings;
d. The decision exceeds the authority of industrial relation arbitration; or
e. The decision is contrary with the laws and legislations.

The Supreme Court within 30 working days from the application received shall decide on the cancellation petition and stipulate consequences of the cancellation of the arbitration decision wholly or partly.

The industrial relations dispute settlement through arbitration shall be accomplished within 30 working days from the signing date of the arbitrator appointment agreement and approval of the parties, the arbitrator is authorized to extend the settlement period once (1) for 14 working days. A dispute is settling or having been settled through arbitration may not be submitted to the Industrial Relations Court.

2. SETTLEMENT THROUGH INDUSTRIAL RELATION COURT

a. Industrial Relations Court

Industrial relations court is a Special Court formed in the District Court and authorized to investigate, adjudicate and decide an industrial relations dispute.

For the first time the Industrial Relation Court is formed in every District Court in the Regency/City existing in every capital province having jurisdiction at the relevant province area. Regency/City having intensive industries, the local government shall form a local District Court based on a Presidential Decree.

Since Jakarta Special Region constitutes The Capital City of the Republic of Indonesia having more than one District Court, for the first time Industrial Relations Court was formed in Central Jakarta District Court. If at the Province capital exists a District Court at the Regency/City level, the Industrial Relations Court is formed in the City District Court.

At the existing District Court, the Industrial Relations Court shall form the Registrar Office of the Industrial Relations Court lead by a Junior Registrar. Sub-Registrar Office whose is responsible to convey the summons, convey the decision and convey the decision copy and organize administration of the Industrial Relations Court and arranging dispute list received in a case book.

Composition of the Industrial Relations Court at the District Court follows:

a. Judge;
b. Ad Hoc Judge;
c. Junior Registrar; and
d. Substitute Registrar.

Composition of the Industrial Relations Court at the Supreme Court follows:

a. Supreme Court Judge ;

b. Ad Hock Judge at the Supreme Court;
c. Registrar.

Judges at the Industrial Relations Court are appointed and inaugurated based on the Supreme Court Head Decree, Ad Hoc judges are appointed by the Presidential Decree based on recommendation from the Supreme Court Head for five (5) years working period, and they can be reappointed for once (1) working period.

For the first time Ad Hoc judges are appointed at least 5 persons from Worker/Labor Union element and 5 persons from Entrepreneur Organization element, and they must fulfil the following:

a. Indonesian Citizen;
b. Believing in God;
c. Loyal to the government and Constitution 1945 of The Republic of Indonesia.
d. Minimum 35 years old;
e. Physically health according to a doctor's certificate;
f. Has an authoritative bearing, honest, fair, and good attitude;
g. Having education background minimum Bachelor Degree (S1), and Law Degree for Ad Hoc judge at the Supreme Court; and
h. Having experience in industrial relations sector.

In carrying out their duties as Ad Hoc Judges, they may not serve concurrently as:

a. Member of the state high institution ;
b. Head of region / territory;
c. Member of legislative institute at regional level ;
d. Civil state officer;
e. Member of Indonesian army/police;
f. Official of a politic party;
g. Lawyer;
h. Mediator;
i. Conciliator;
j. Arbitrator;

k. Official of Worker/Labor Union or official of Entrepreneur Organization.

If any Ad Hoc judge serves concurrently with the position above, his position as an Ad Hoc Judge may be revoked.

b. Settlement at the Industrial Relations Court

Claims on the industrial relations dispute are filed to the Industrial Relations Court at the District Court whose jurisdiction covers the place where the worker/laborer works. The filing of the claim shall attach settlement minutes through mediation or conciliation. The Judge of the Industrial Relations Court is obligated to return the claim to the claimant if it does not attach the settlement minutes through Mediation or conciliation.

The claimant may at anytime withdraw the claim before the defendant give response, if the defendant has given a response against the claim, the withdrawal of the claim will be approved by the Court if the defendant agreed.

Duty and authority of the Industrial Relations Court are to investigate and to decide at:

a. The first level of the right dispute;
b. The first and final level of the interest dispute;
c. The first level of the employment termination dispute;
d. The first and final level of the dispute between worker/labor unions in one company.

The Judge tribunal's decision shall consider laws, agreement, custom, and justice which are mentioned in the open session for public, the decision of the Court shall contain:

a. Head of the verdict reads " For Justice Based on the One Almighty God";
b. Name, position, citizenship, domicile or address of the disputing parties;
c. Summary of the claim and response of the defendant;
d. Consideration on each submitted evidence and data, and matter happen

during the dispute processing ;

e. Legal reason as the basic of the verdict;
f. Verdict injunction on the dispute;
g. Day and date of the verdict, names of the judges, Ad Hoc Judge who adjudicate, Registrar, and description on absence and presence of the parties.

The Judge Tribunal is obligated to make decision on the dispute settlement within fifty (50) days since the first session date. Within seven (7) days since the award is read, Substitute Registrar shall have informed the decision to the absence party and within 14 working days since the decision is signed, the Junior Registrar shall have issued copy of the decision, and within seven (7) working days after the decision copy issued, the decision copy shall have been conveyed to the parties.

If a dispute on right and/or interest is accompanied by a dispute on the employment termination, the Court shall obligate to first settle the disputes on right and interest.

c. Dispute Settlement Through the Supreme Court

The Industrial Relations Court Decision on disputes of right and employment termination shall have a permanent legal power if there is no cassation filed to the Supreme Court, and within fourteen (14) working days since:

a. For the present party, the decision is read by the judge tribunal.
b. For the absent party, it received the notice on the decision.

The cassation petition shall be conveyed in writing through Sub-Registrar Office of the Industrial Relations Court at the Local District Court, and within fourteen (14) working days since the receipt of the cassation petition shall have been conveyed to the Supreme Court Head by the Sub-Registrar Office Court.

Settlement of disputes on right and employment termination at the Supreme Court is performed within thirty (30) working days since the receipt of the cassation petition.

CHAPTER V
ADMINISTRATIVE SANCTION AND CRIMINAL PROVISION

1. ADMINISTRATIVE SANCTION

Industrial Relations Dispute Settlement is carried out outside the court and through the Industrial Relations Court. In light of the above, nurturing and monitoring on industrial relations settlement dispute are made by Minister or official who is responsible with manpower affairs against the Mediator, Conciliator and Arbitrator. Nurturing and monitoring on industrial relations dispute settlement through the Industrial Relations Court implemented by the Head of the District Court against the Ad-Hoc Judges, Junior Registrar and Substitute Registrar of the Industrial Relation Court, and the Supreme Court Head against the Supreme Court Judges, Junior Registrar, and Substitute Registrar in the Industrial Relations Court at the Supreme Court.

a. Mediator

If the mediator could not settle an industrial relations dispute within thirty (30) working days without any valid reason it can be applied an administrative sanction in form of discipline sanction pursuant to the prevailing laws and legislations to the civil state officer.

b. Conciliation

a. Written warning, if the conciliator within fourteen (14) working days does not convey a written suggestion or does not assist the parties within three (3) working days to make a Collective Agreement;
b. Temporary revocation as Conciliator, if he/she has been given three times written warning for at least three months period;

c. Permanent revocation as Conciliator, if:
   (1) The Conciliator has been punished by three times administration sanction in the form of temporary revocation;
   (2) It is proven to perform a criminal action;
   (3) Misuse his/her position; and/or
   (4) Leak the requested information

c. Arbitrator

a. Written warning, if he/she could not settle an industrial relations dispute within thirty (30) working days and in the extended period :
b. Temporary revocation, if he/she has been given three times written warning for at least three (3) months;
c. Permanent revocation as Arbitrator, if :
   1) The Arbitrator has at least three (3) times made decision exceeding its authority and in contrary with laws and legislations and the Supreme Court is approve to make a review on the Arbitrator decision;
   2) It is proven to make a criminal action;
   3) Misuse his/her position;
   4) The arbitrator has been punished with administrative sanction in form of three times temporary revocation as arbitrator.

d. Junior Registrar

If he/she does not issue the decision copy within fourteen (14) working days after the decision is signed and does not convey the decision copy to the parties within seven (7) working days, it shall be charged an administrative sanction pursuant to the prevailing laws and legislations.

2. CRIMINAL PROVISION

There shall be punished as a criminal action with sanction of minimal one (1) month and maximal six (6) months in imprisonment and or fined minimal ten million rupiahs (Rp. 10.000.000,00) and at maximal forty million rupiahs (Rp.50.000.000,00) to those whoever violates the following provisions:

a. Whoever to be asked information by the Mediator, but does not give the information including to open the books and show necessary document/letter;
b. Whoever to be asked information by the Conciliator, but does not give the information including to open the books and show necessary document/letter;
c. Whoever to be asked information by the Arbitration, but does not give the information including to open the books and show necessary document/letter;
d. Conciliator does not keep the confidentiality;
e. Arbitrator does not keep the confidentiality of all requested information;
f. Whoever does not want to be witness or expert witness to fulfil summon to give testimony asked by the Judge tribunal;
g. Whoever does not want to give information including opening the books and showing necessary document/letter.

CHAPTER VI
CLOSING

The bill of Industrial Relations Dispute Settlement was approved on Parliament Plenary Meeting on December 16, 2003 and pursuant to Article 20 paragraphs (4) and (5) of the 1945 Constitution which stated that the President shall legalize the approved Bill into the Act, and if it is not legalized within thirty (30) days since the Bill is approved, the Bill shall become the Act and obligated to be enacted.

Based on the above point, the Bill of Industrial Relations Dispute Settlement within thirty (30) working days since being approved becomes the Act by the law, which is to be effective in one (1) year after it is enacted.

Before the Industrial Relations Court is formed, Regional Committee and Central Committee shall still perform their duties and functions pursuant to provisions of the prevailing laws. However, if the Industrial Relations Court are formed, the industrial relations dispute settlement and employment termination submitted to:

a. Regional Committee but not settled yet, then the industrial relations dispute settlement and employment termination shall be settled to the Industrial Relations Court at the Local District Court;
b. Regional Committee decision which is refused and filed to be appealed by the party or the parties, and the decision is received within fourteen (14) working days, the settlement shall be performed by the Supreme Court;
c. The Central Committee but not settled yet, then it shall be settled by the Supreme Court;
d. The decision of the Central Committee which is refused and filed to be appealed by the party or the parties and the decision is received

within ninety (90) working days, and then it shall be settled by the Supreme Court.

CURRICULUM VITAE

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Employee No.(NIP)	: 140058574
Grade Position	: Main Advisor (IV/e)
Place and Date of Birthday	: Sedinginan (Riau Prov.), 18 December 1946
Position	: Director General of Industrial Relations Ministry of Manpower and Transmigration

I. EDUCATION BACKGROUND

1. Year 1967 until 1973	: Medical Faculty UGM in Yogyakarta
2. Year 1974	: Public Health Faculty UI Majoring at Hygiene
3. Year 1998	: Master of Science on Management Curtin University

I. WORKING EXPERIENCES

1. Year 1973	: Inspector of Work Health at Manpower Office Riau Province
2. Year 1982 – 1987	: Member of Parliament of the Republic of Indonesia in Jakarta
3. Year 1994 – 1997	: Head of Manpower Office Riau Province
4. Year 1997 – 2001	: Head of Manpower Office East Java Province, Surabaya

5. Year 2001 – 2003 : Director General of Inspection, MOMT

6. Year 2003 - Now : Director General of Industrial Relations, MOMT

III. TRAININGS AND COURSES

1. Year 1986 : Planning Course at National Level

2. Year 1989 : 1) Course on Chemical Safety and Major Hazard Inspection in School of Community Health, Curtin University of Technology, Perth, Australia;

   2) Symposium on Government Controls in Occupational Health and Safety and Welfare of Western Australian in Perth.

3. Year 1995 : 1) Symposium on Tripartism by ILO in Penang, Malaysia;

   2) Comparative Study on Dual System on Vocational Training in Austria and German.

4. Year 2001 : 1) Comparative Study on Implementation of Industrial Relations in Japan;

   2) Some International Seminars in Various Countries.

IV. ORGANIZATIONAL EXPERIENCES

1. IPR Chairman in Yogyakarta
2. KODEMA Chairman of Medical Faculty UGM
3. KNPI Chairman of Riau Province
4. Vice Chairman of IDI Riau
5. Member of Advisory Council of GOLKAR Riau

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