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# Advantages & Disadvantages Of Mediation And Conciliation As An Industrial Relations Dispute Resolution Option

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**ABSTRACT**

*Since the birth of Law No. 2 of 2004 on industrial dispute resolution, the parties to the dispute have become easier and helped to resolve disputes between them. The instruments provided also become more diverse compared to the old rules. Such as mediation, conciliation and arbitration instruments. However, at the implementation stage, not many people understand the difference between dispute mediation and conciliation in terms of the origin and function of conciliation mediation has different characteristics as a passive mediator while in conciliation the conciliator is more active in resolving disputes. In the settlement of industrial disputes, mediation is used as the main instrument for resolving a wider scope than conciliation. Mediation can deal with disputes of rights, interests, termination of employment (layoffs) and disputes between unions within one company. Conciliation makes progress limited to conflicts of interest, termination, and disputes between unions in one company. Although in fact most of the industrial disputes involving rights disputes. The mediation and conciliation stationery comprehensively summarizes the advantages and disadvantages of each of these tools.*

## INTRODUCTION

Since the beginning of the Indonesian state experienced a monetary crisis in 1998, many business sectors experienced shocks in running their businesses. The impact of the monetary crisis that hit caused the market to panic and not a few business people who immediately took anticipatory actions so as not to feel the impact of the global crisis that occurred and could save their assets safely from the growing crisis wave. Many selling prices of the company's shares fell, exporters did not get more orders, so the company's income became little. Therefore, to cover the existing losses, the steps taken by the company are to make efficiencies in various fields to cover expenses that begin to soar with declining revenues due to a market that is in a panic condition.

In Article 2 of Law No. 2 of 2004 on the settlement of industrial relations disputes set about the types of industrial relations disputes consisting of disputes over rights, disputes over interests, disputes over termination of employment and disputes between unions/labor unions in only one company. Therefore, Law No. 2 of 2004 looks more comprehensively at the disputes that exist in an Industrial relationship. Regulation on the steps of Industrial Relations dispute resolution in Law No. 2 of 2004 on the settlement of industrial relations disputes consists of several stages, namely first of

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all the steps to be taken by the parties through bipartite, then if the settlement after bipartite does not reach an agreement, the parties are given the option to choose to use the settlement mechanism through conciliation or arbitration (this option only applies to disputes of interest and disputes between unions in only one company). In the event that the parties do not establish their choice, then within seven working days, the responsible institution in the field of Labor will delegate the settlement of the dispute to the mediator.

The efficiency and anticipatory measures taken by these companies are often perceived as contrary to the rights of the workers. Such as examples of certain steps that can be done by the company to save the company, namely the reduction of benefits, reduced overtime pay, reduced days of leave, and worse the occurrence of termination of employment (layoffs). There are some circumstances that force the company to take emergency measures to save the company so that the impact on the workers who work in certain sectors suffered losses.

The saturation of dispute resolution through litigation causes the parties to the dispute to seek other avenues in the dispute resolution process between them. Business people consider that the dispute resolution process through litigation is ineffective, inefficient, too formalistic, convoluted, the settlement takes a long time, expensive costs and decisions that are win-lose solution (win-lose) so that it can stretch the relationship between both parties in the future.

Starting from dissatisfaction with the Court world, experts are looking for alternative dispute resolution that is effective, simple, cheap and has the benefits of a win-win solution. Therefore, in this paper, the author will outline the pattern of settlement of industrial relations disputes through mediation and conciliation at the same time the author will outline a comprehensive comparison of the two settlement alternatives.

## METHOD

The research method in this paper is a comparative normative juridical research method, namely this study examines the development of theories and norms about legal institutions (mediation and conciliation) and describes the theories and norms that are compared with one another in a comprehensive manner. Comparison is carried out with the aim to help readers understand the advantages and disadvantages of legal institutions that develop in society that tend to have the same function, namely dispute resolution instruments.

## RESULTS AND DISCUSSION

### A. Settlement Of Industrial Relations Disputes Through Conciliation

Since the enactment of Law No. 30 of 1999 on arbitration and Alternative Dispute Resolution, the term conciliation already exists, which is mentioned in Article 1 Number 10 of Law Number 30 of 1999, but it is not clear. Conciliation as an alternative form of out-of-court dispute resolution is an act or process to reach an agreement or peace outside of court. Conciliation serves to prevent the litigation process from being carried out, it can also be used at any level of the ongoing judiciary, both inside and outside the court, with the exception of matters or disputes where a judge's decision has been obtained that has permanent legal force.

In Article 1 Number 13 of Law Number 2 of 2004 concerning the settlement of industrial relations disputes, it is stated that: "conciliation of industrial relations, hereinafter referred to as conciliation, is the settlement of disputes of interest, disputes over termination of employment, or disputes between unions/labor unions in only one company through deliberation mediated by one or more neutral conciliators".

When viewed from the" origin " of the word conciliation, Conciliation (in English) means peace in Indonesian. Then if you listen to the understanding given by Black's Law Dictionary, it can be said that in principle conciliation is not much different from peace, as stipulated in Article 1851 to Article 1864 of the eighteenth chapter of Book III of the Civil Code, and specifically Article 1851 to Article 1864.

Thus, conciliation is an alternative dispute resolution process involving a third party, where the third party involved in resolving the dispute is a professional and can be proven reliability. The conciliator in the conciliation process is also obliged to convey his opinions regarding : the seat of the problem or dispute at hand; alternative ways of resolving the dispute at hand; how the best way to resolve the dispute; what are the advantages and disadvantages for the parties;legal consequences.

Although the conciliator has the right and authority to express his opinion openly and impartially to any of the parties to the dispute, the conciliator is not entitled to make decisions in a dispute for and on behalf of the parties. All final results in this conciliation process will be determined solely by the parties to the dispute as outlined in the form of an agreement between them.

Basically, conciliation has almost the same characteristics as mediation, it's just that the role of the conciliator is more active than the mediator,

namely: a. Conciliation is the process of resolving disputes outside the court cooperatively; b. The conciliator is in charge of helping the parties to the dispute to find a solution; c. The conciliator is active and has the authority to propose opinions and design the terms of the agreement between the parties; d. The conciliator does not have the authority to make decisions during the negotiations; e. The purpose of conciliation is to reach or produce an agreement acceptable to the parties to the dispute.

The process developing in the United States is somewhat different from that developing in Japan and Korea. Conciliation in the US is the initial stage of the mediation process with reference to application. If a claim is filed against a person, and the claim filed by the claimant (claimant) can be accepted in his position as a respondent. In such a stage, a settlement has been obtained without continuing financing, because the respondent with goodwill is willing to accept what is proposed by the claimant. This is called winning over by goodwill. Usually the reason the respondent is willing to comply with the claim in goodwill is because the respondent is aware of the seriousness of the disputed issue, or he does not want the matter to be interfered with by a third party.

In an effort to resolve the dispute :the conciliator does not have to hold meetings and talks with both parties somewhere, but can be generated shuttle negotiation between the parties and the decision he took into a resolution that can be imposed on both parties.

The inherent nature of this method is immediately apparent, if mediation is essentially a negotiated existence, then conciliation involves the intervention of a third party on a formal legal footing and bringing it about in a manner comparable, but not identical, to investigation or arbitration.

At the conclusion of such conciliation, the conciliator shall present the agreement signed by the parties or provide a report containing the failure or provide notice from one or more parties containing the Non-continuation of the conciliation process. Such notices are given to the Secretariat of the Court (Article 8).

Meanwhile, the Industrial Relations Conciliator, hereinafter referred to as the conciliator, is one or more who meet the requirements as a conciliator stipulated by the minister, who is in charge of conciliation and is obliged to provide written recommendations to the parties to the dispute to resolve disputes of interest, disputes over termination of employment, or disputes between unions/labor unions in only one company.

From this understanding it is clear that the conciliator of industrial relations dispute resolution comes from a third party, outside the employee in the agency responsible for the field of Labor. Unlike the case with mediators who come from employees in agencies responsible for the field of employment. The scope of disputes that a mediator can handle includes rights disputes, whereas a rights dispute conciliator cannot. Settlement of rights disputes is not given authority or doubt the ability of the conciliator to handle rights/legal disputes, whereas the requirement to become a conciliator is not only to have experience in the field of industrial relations for at least 5 (five) years, but also to master the laws and regulations in the field of Labor.

In Law No. 2 of 2004 regulated the settlement of industrial relations disputes through conciliation is carried out in the following ways : a. Settlement by the conciliator is carried out after the parties submit a written request for settlement to the conciliator appointed and agreed by the parties. b. Within no later than 7 (seven) days after receiving the delegation of dispute resolution in writing, the conciliator must have conducted a research on the seat of the case and no later than the eighth working day, the first conciliation hearing must have been held; c. The conciliator may call witnesses or expert witnesses to attend the conciliation hearing to be asked and heard; d. In the case of settlement through conciliation reaching an agreement, a collective agreement is made signed by the parties and witnessed by the conciliator and registered in the Industrial Relations Court in the District Court in the jurisdiction of the parties entering into a collective agreement to obtain a certificate of proof of registration. e. In the event that no settlement agreement is reached through conciliation, then : 1) the conciliator issues a written recommendation; 2) the written recommendation must be submitted to the parties no later than 10 (ten) days after the first conciliation hearing; 3) the parties within 10 (ten) days of receiving the recommendation must provide an answer to the conciliator whose contents approve or reject the recommendation made by the conciliator; 4) if the parties do not give their opinion, it is considered that they reject the written recommendation; 5) in the event that the written recommendation is approved, within 3 (three) days after the written recommendation is approved, the conciliator must have completed assisting the parties to make a collective agreement and then registered in the Industrial Relations Court in the District Court in the jurisdiction of the parties

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entering into a collective agreement to obtain a certificate of proof of registration. f. If the registered collective agreement is not executed by one of the parties, the injured party may apply for execution to the Industrial Relations Court at the District Court in the area where the collective agreement is registered to obtain a determination of execution; g. In the event that the execution applicant is domiciled outside the District Court where the collective agreement is registered, the execution applicant may apply for execution through the Industrial Relations Court in the District Court in the region of the execution applicant's domicile to be forwarded to the Industrial Relations Court in the competent District Court to carry out the execution; h. If the written recommendation made by the conciliator is rejected by either party or the parties, either party or the parties may proceed to resolve the dispute in the Industrial Relations Court at the local District Court; i. The conciliator must complete his duties no later than 30 (thirty) working days from the date of receiving the dispute request.

Furthermore, in relation to conciliators who cannot perform their duties properly in resolving industrial relations disputes, Article 117 of law no. 2 of 2004 regulated the sanctions to be imposed on the conciliator, namely: a. Conciliators who do not submit written recommendations within 14 (fourteen) working days as meant in Article 23 paragraph (2) point b or do not assist the parties in concluding a collective agreement within 3 (three) working days as meant in Article 23 paragraph (2) letter e may be subject to administrative sanctions in the form of a written reprimand. b. Conciliators who have received a written reprimand 3 (three) times as referred to in Paragraph (1), may be subject to administrative sanctions in the form of temporary revocation as conciliators. c. Sanctions as meant in Paragraph (2) can only be imposed after the person concerned resolves the dispute he is handling. d. The administrative sanction of temporary revocation as a conciliator is given for a maximum period of 3 (three) months. Terms of the imposition of administrative sanctions in the form of permanent revocation to the conciliator must pay attention to the following matters: a. The conciliator has been given an administrative sanction in the form of temporary revocation as a conciliator as referred to in Article 117 paragraph 2 three times; b. Proven criminal offense; c. Abuse of office; and/or d. Divulge the requested information as meant in Article 22 paragraph (3).

**B. Settlement Of Industrial Relations Through Mediation**

Mediation comes from English, "Mediation" or mediation, which is the resolution of disputes involving third parties as mediators or dispute resolution by mediating. Article 1 Number 11 of Law No. 2 of 2004 on the settlement of industrial relations disputes states that : "industrial relations mediation, hereinafter referred to as mediation, is the settlement of rights disputes, disputes of interest, disputes over termination of employment, and disputes between unions/labor unions in only one company through deliberation mediated by one or more neutral mediators".

Meanwhile, the Industrial Relations Mediator, hereinafter referred to as the Mediator, is : "an employee of a government agency responsible in the field of Labor who meets the requirements as a mediator set by the Minister for the task of mediation and has the obligation to provide written advice to the parties to the dispute to resolve disputes of rights, disputes of interest, disputes over termination of employment, and disputes between unions/ labor unions in only one company".

Furthermore, from a theoretical point of view, there are some limitations to mediation proposed by experts. Gary Goodpaster, States " " mediation is a problem-solving negotiation process in which impartial and neutral outsiders work with disputing parties to help them reach a satisfactory agreement. Unlike a judge or arbitrator, a mediator does not have the authority to decide disputes between the parties. However, in this case the parties authorize the mediator to help them resolve issues between them. The assumption is that a third party will be able to change the strength and social dynamics of the conflict relationship by influencing the parties ' personal beliefs and behavior, by providing knowledge or information, or by using a more effective negotiation process, and thereby helping the participants to resolve disputed issues".

Mediation is a "good faith " procedure in which the parties to a dispute make suggestions as to how the dispute will be resolved by the mediator, because they themselves are unable to do so. Through this freedom it is possible for the mediator to provide an innovative solution through a form of settlement that cannot be done by the court, but the parties to the dispute obtain mutually beneficial benefits.

Basically, dispute resolution through mediation has the following characteristics or elements: 1) mediation is the process of dispute resolution outside the court based on negotiations; 2) The

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Mediator is involved and accepted by the disputing parties in the negotiations; 3) The Mediator is in charge of helping the parties to the dispute to find a solution; 4) The Mediator is passive and only serves as a facilitator and tongue-in-cheek of the parties to the dispute, so it is not involved in drawing up and formulating plans or proposals for an agreement; 5) the Mediator does not have the authority to make decisions during the negotiations; 6) the purpose of mediation is to reach or produce an agreement acceptable to the disputing parties in order to end the dispute.

Mediation has been used in various countries, for example in the United States in Europe, where litigation and litigation costs are difficult to control.7 it is interesting that mediation is supported by international legal experts, because they realize that they can resolve disputes quickly and of course with the result that the benefits of their services come quickly as well. In dispute resolution through mediation there is no element of coercion between the parties and the mediator, because the parties voluntarily ask the mediator to help resolve the conflict they are facing. Therefore, the mediator acts as a helper, although there is an element of intervention against the parties who are in conflict.

Dispute resolution through mediation is different from dispute resolution methods such as physical coercion, self-help, litigation, counseling, negotiation, and arbitration. By Christopher W. Moore mentions some of the advantages that can be obtained from the method of settlement through mediation, namely: a. A sparing decision b. Quick Settlement c. Satisfactory results for all parties d. Comprehensive and Customized deals e. Practice and learn creative problem solving procedures f. Greater degree of Control and predictable results g. Individual empowerment h. Preserving an existing relationship or ending a relationship in a kinder way i. Decisions that can be made j. A better deal than just accepting the result of a compromise or a win-lose procedure k. Decisions that take place without knowing the time.

Dispute resolution through mediation tends to persist throughout time and if the consequences of the dispute arise later, the parties to the dispute tend to utilize a forum for cooperation to resolve the problem to find a middle ground from their differences of interest rather than trying to resolve the problem with an adversarial approach.

In addition to the advantages of dispute selection in the form of mediation, this mediation institution also has weaknesses. Among these weaknesses are : 1) used to take a long time; 2) difficult execution mechanism, since the manner of execution of the decision is only like the force of execution of a contract 3) strongly suspended from the good faith of the parties to resolve the dispute to completion; 4) mediation will not bring good results, especially if not enough information and authority is given to it; 5) if the lawyer is not involved in the mediation process, there may be important legal facts that are not conveyed to the mediator, so that the decision becomes biased.

If we compare, dispute resolution through litigation / court tends to aim to determine which party wins and loses (win-lose) based on the evidence presented by the parties or prosecutors (if criminal). Thus, the goals to be achieved in the settlement of disputes through the courts are unequivocal in nature. While the purpose of conflict resolution through mediation is: 1) produce a plan (agreement) forward that can be accepted and executed by the parties to the dispute; 2) Preparing the parties to the dispute to accept the consequences of their decisions; 3) Reduce the worry and other negative effects of a conflict by helping the disputing parties to reach a consensus settlement.

Therefore, the holding of mediation for the parties to the dispute will help to: 1) reduce barriers and communication problems between the parties involved; 2) maximization of exploration of alternative solutions to long-term problems/conflicts; 3) Focus on the needs of all parties; 4) develop a long-term conflict resolution model.

Settlement of industrial relations disputes through mediation according to Article 4, preceded by the following stages : a. If bipartite negotiations fail, one or both parties record their disputes to the local employment agency by attaching evidence that a bipartisan settlement has been made; b. Upon receipt of the recording, the agency responsible for the field of Labor shall offer the parties to agree on choosing a settlement through conciliation or arbitration. Except in the case of rights disputes that can only be resolved by mediation and termination disputes that are only the authority of the mediation and conciliation board; c. If within 7 (seven) days the parties do not make a choice, the agency in charge of employment bestows the settlement to the mediator.

Mediation in industrial relations is also part of the alternative options for resolving industrial relations disputes out of court. This can be inferred from the description of Article 4 (four) of Law No. 2 year 2004 that is after bipartite failed then given a choice between conciliation or arbitration do not be mistaken interpretation that the choice of media to

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resolve disputes outside the court is only between arbitration or conciliation. But mediation is also an alternative option that is regulated by law to enter the hands of the government in this case employees of agencies responsible for the field of labor except in the case of rights disputes, the settlement is the absolute competence of mediation. If the parties do not choose between arbitration or conciliation, then there is mediation in which the mediator is an employee of an employment agency.

## CONCLUSION

Industrial Relations dispute settlement conciliator comes from a third party, outside the employee in the agency responsible for the field of Labor appointed by the minister in accordance with the requirements according to. However, in conciliation the settlement of industrial relations disputes does not handle rights disputes as handled by mediation, namely rights disputes. In the context of industrial relations, the settlement of industrial relations disputes through mediation has a broader scope than conciliation while "Industrial Relations mediation covers the settlement of : disputes over rights, disputes over interests, disputes over termination of employment, and disputes between unions / labor unions in only one company.

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