

ALTERNATIVE DISPUTE RESOLUTION BIPARTITE AND MEDIATION IN INDUSTRIAL RELATIONS DISPUTES SETTLEMENT

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ABSTRACT

Industrial Relations Dispute Settlement or known in Indonesia as PPHI through bipartite and mediation must be based on the philosophy of Pancasila for the purpose of resolution by deliberation covered by kinship spirit. A Hermeneutic method in law, meanings understanding as a method of an interpretation of the texts of law or to understand a method to normative manuscript. The wages theory, put workers and businesses is a family or joined together as one in the company. Problem solved by deliberation and consensus not give a priority with “bargaining position” pattern that will lead to some win and there are who lost. The ability in a mediator based on: knowledge, expertise, skill and attitude, behavior. The expertise of a mediator technically conceptual, and expertise interpersonal relations; greatly determine the implementation of the PPHI which in turn could be solved quickly, fair, and cheap.

Key words: Bipartisan, Mediation, Pancasila, PPHI, Wages Theory

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1. INTRODUCTION

There is an inconsistency in the substance of Act Number 13 Year 2003 concerning Employment, which concerns matters that do not conform to the formalization and legal substance. The Black Law Dictionary states that inconsistencies arise from comparisons between existing rules and facts. In the national medium-term development plan or known as RPJMN where 2004-2009's RPJMN contains political and legal issues in the law indicated by inconsistencies.[1]

The law of substance according to Satjipto Rahardjo is to discuss progressive law, as follows: *first*, the law is for humans, not the other way around. Therefore, even though the law starts from the text of the law, further action is mentioned by humans in determining

decisions; *second*, upholding the law, is creating awareness in society; *third*, judges are not legislators, because their duties are adjudication or examinations or judges.[2]

The law to regulate human behavior which is in contact with the state is aimed at creating "*formal justice*" or "*justice*", but for "*substantial justice*" must be fought for again. In labor law, *formal justice* can be done, but for substantial justice it cannot be enforced starting from work agreement arrangements, company regulations, collective labor agreements (CLA), Industrial Relations Dispute Settlement and other fields, which are not fulfilled by substantial justice that leads the industrial disputes.

Industrial dispute, is part of the dispute in general that can be happened without seeing the place, time and condition. Psychologically, the dispute is an emotional outbursts which affect one's relationship with others. This occurs because of differences which is a normal and has become human nature itself. But the entire dispute, can be resolved well without harm both sides.[3]

Industrial Disputes occur in almost all provinces in Indonesia, sure vary in the number and kind of dispute that occurred. For example in the Special Region of Yogyakarta in the 2006-2011 period, as follows:

Table 1 The Number of cases registered and broke PPHI Yogyakarta (2006-2011)

No.	Year	Number Of Casses
1.	2006	10
2.	2007	15
3.	2008	10
4.	2009	20
5.	2010	17
6.	2011	12
	Amount	104

Source: PPHI Yogyakarta, 2012[4]

Number of cases above, every year there are at least 10 cases. However, the number of actual upward of existing data, because completion done out of court, through bipartite system, mediation, conciliation or arbitration. Likewise settlement deliberations and consensus between the parties, and not revealed by the mass media.

Completion by consensus can through the can through the principle of *Conciliation and arbitration* is a way of solving problems or differences of opinion, so as not protracted and results in harm workers or businessman.[5] Institutional now based Act Number 2 Year 2004 about Industrial Relations Dispute Settlement.

PPHI occur in a variety of dispute resolution in general issues like demand higher wages, minimum wage system changing in Province or City or District into the wage system decent, Outsourcing, BPJS Employment, occupational safety, and working or resting Hours. Dispute Resolution in above, it can be done well, without harming the workers, employers, government and general society. One settlement patterns as we know, are indigenous, culturally Indonesia, with deliberation to reach a consensus. This pattern, evident what from the formal aspects in bipartite settlement system, mediation, conciliation and arbitration. But in this paper, the authors focus on discussion of bipartite settlement and mediation alone, for settlement conciliation and arbitration is rarely so selection of the disputing parties.

2. RESEARCH METHODS

This research approach stems from Hermeneutics Philosophy according to Arief B. Sidharta[6]. It is philosophy of understand or comprehend something, namely a reflection of philosophical terms the possibilities for all human experience and interaction with reality, including the events understand or interpretation.[7]

This law research, using legal research hermeneutics[8]. Approach interdisciplinary under consideration, that the relevance of the study of legal hermeneutics has two meanings at once: *first*, can be understood as a method of interpretation of legal texts or understand the method to a normative text. Where the correct interpretation of the text of the law it always should relate to the content (legal norms), either express or implied, or between sound law and spirit of the law. *Second*, legal hermeneutics have a major influence or the relevance of the "discovery of the theory of law". This is shown in terms of understanding "the circle hermeneutical spiral" (*circle hermeneutics*), which formed a reciprocal process between rules with facts, included in the paradigm of the new modern legal discovery.[9] As "the main approach" legal research using *normative* or *dogmatic* approach to law[10]

Laws of employment is closely related to the issue of statehood, social and international. Therefore Employment Law as a legal subsystem also has complex characteristics of the law and not enough with the legal approach, but with some other approach, namely: *philosophy of law; sociology of law and law politics*.

3. LITERATURE REVIEW

People's welfare according Soekarno said that not enough political democracy, we still need more democracy in the economic field.[11] One effort in economic democracy, is the creation of employment through investment in various sectors, such as agriculture, plantation, fishery, tourism and industry. Labor-intensive industries precedence over capital-intensive, because more absorbing workers.

Industry spawned industrial relations between employers and workers accepted universal; First, industrial relations based on liberal democracy. Grounding of Philosophical is talk about individualism and liberalism, adopted by western industrialized countries in general. Industrial relations on the basis of liberal democracy: a) workers and employers have different interests, namely the interests of workers to earn as much as possible while employers achieve the highest gains; and b) disagreements resolved by penalty force, while workers with weapons cessation businessman close company (*lock out*).

Second, industrial relations based on class struggle. The philosophy of industrial relations are Marxism/Communism is based on: a) based on the theory value of more than Marx, the entrepreneur tries to ensure there is more value by seizing most workers' wages; and b) workers and employers are contrary to the interests of the two parties therefore disagreements resolved by mutual dropping.

Third, industrial relations based on lifelong commitment (*life long employment*) in Japan which is based on the Japan's philosophy and culture.[12]

From the table above shows that the three patterns of industrial relations is apparently have a pattern or system of industrial relations which differ from one another in accordance with ideological, political, economic, social and cultural rights of the people concerned. The concept of industrial relations applied well in other countries. Industrial relations system is the most appropriate system in accordance with the socio-cultural values of the country concerned. Each community or nation have a pattern or industrial relations system itself, which will be different from one another in accordance with the socio-cultural values. In addition, it is also influenced by ideology, politics, and economics of society.[13]

Alternative Dispute Resolution Bipartite and Mediation in Industrial Relations Disputes Settlement

Own industrial relations system has ups and downs in the relationship between employers and workers, sometimes harmonious and sometimes there is a difference that becomes a dispute. Dispute sourced from internal sources, in a literature review of employment law is called industrial disputes.[14] These disputes can be divided into two kinds of disputes: first, disputes of rights (*Rechtsgeschillen*), where disputes arise because one party does not meeting the content of employment agreements, company regulations, the Collective Labor Agreement (CLA), or provisions labor laws; and secondly, interest disputes (*Belangengeschillen*), where disputes arising from changes in the terms of labor or resulting from failure no approchement informed about the terms of employment and labor or circumstances.[15]

Ministry of Manpower and Transmigration has compiled a mindset formulation of direction policy for labor affairs. National medium-term development plan at Policy Direction of Employment in 2014-2019, consisting of training, placement, industrial relations and supervision. The policy, should pay attention to and consider the demographic situation, economic, political, legal, regional autonomy, the nature of the labor market, and corporate culture. Dispute Resolution in the script on the field of employment policy at the top, enter in the field of industrial relations. Dispute did occur in different companies sometimes cannot be avoided, because it involves rights and interests are different.

Dispute resolution regulation, formulate 4 kinds of disputes. For details on the table below.[16]

Table 2 Type of Industria Disputes and Causes of Disputes

No (1)	Types Of Disputes (2)	Cause Of Disputes (3)	The Owners (4)
1.	Disputes Over Rights	Due to non-fulfillment of rights, due to differences implementation or interpretation of provisions of legislation, labor agreements, company regulations or collective agreements	Between employers or combined the businessman with workers/laborers or Labour Union
	Conflict Of Interest	Because of the absence conformity opinion about creation, and / or change the terms of work set in agreement, company regulation, Contract.	Between employers or combined the businessman with workers/laborers or Labour Union
	Over Termination Of Employment	Because of the absence of an opinion on terminations relations work done by one party.	Between employers or combined the businessman with workers/laborers or Labour Union
	Disagreement between -SP/SB	Having no conformity an opinion on membership, the exercise of rights, and the obligation of workers guild in one company.	Among Labour Union one with Labour Union else in the company.

Source: Abdul Khakim, *Indonesian Labour Law Basics* 153 (Citra Aditya Bakti, Ltd.2009)

3.1. PPHI Efforts

PPHI law dispute resolution weigh in the preamble states that: 1) The industrial relations harmonious, dynamic and justice needs to be realized optimally in accordance with the values of Pancasila; and 2) in the industrialization era, industrial disputes have become increasingly

and complex, so that the necessary institutions and mechanisms for dispute settlement industrial fast, accurate, fair, and inexpensive.

PPHI divided into: 1) a settlement through the Industrial Relations Court, is a special court formed in the District Court, to investigate, hear and give verdict against industrial disputes; 2) a settlement out of court or Alternative Disputes Resolution (ADR), namely through bipartite, mediation, conciliation and arbitration. Further study of the research focused on the ADR system.

Bipartite settlement is known as negotiation. According to Huala Adolf, Negotiation the settlement of disputes between the two sides which is used by humans benefit with a settlement that is very satisfying and without attracting to attention many communities.[17] Course completion this way there are weaknesses adverse party weak, namely: 1) a high social status and low; 2) high and low education; 3) experience broad and narrow; and 4) support facilities are many and few.

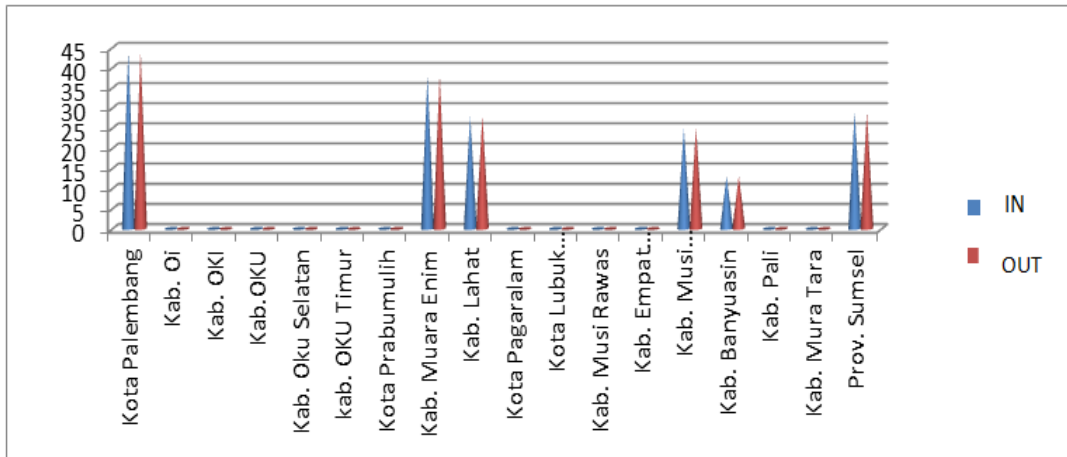
Definition of bipartite in this case as a mechanism is the act or process of negotiations conducted between two parties, namely the employer by the workers / laborers or Labour Union, among others, in the event of a dispute between the employer and the worker / laborer in the enterprise (Circular Director General of Industrial Relations Number. SE-O1 / D.PHI / XI / 2004).Bipartite negotiations are in essence an attempt deliberation between the employers and the workers / laborers or Labour Union. The scope of the settlement of dispute through bipartite includes four types of disputes, namely rights disputes, conflicting interests, a layoff disputes, and disputes between the labour union in one company.[18]

Although, clearly the legal basis of the settlement of the dispute, but it remains difficult to implement its solution. Rafiqul Islam in his book International Trade Law, said about dispute settlement procedure has many drawbacks and its completion is difficult to be accepted by the parties. Certain characteristics in practice, it will be difficult if one of the parties notch economic or political weaker than the other party. Frequently occurs the stronger party has a stronger position in controlling the dispute of settlement proceeds.[19] Such thinking in settling disputes or disputes between workers and employers, for its completion has been setin the Dispute Resolution Act

Industrial relations between workers and employers, cannot be separated from their Dispute Industrial Relations (PPHI)[20] which, according to Article 2 of Act Number 2 Year 2004, there are four types namely: *disputes over rights, conflicts of interest, disputes layoffs, and Disagreement between to Labour Union in just one company*. While the procedure of dispute settlement trough: *the bipartite, mediation, concilliation and arbitrartion*. PPHI and period of time can be seen in the following table:

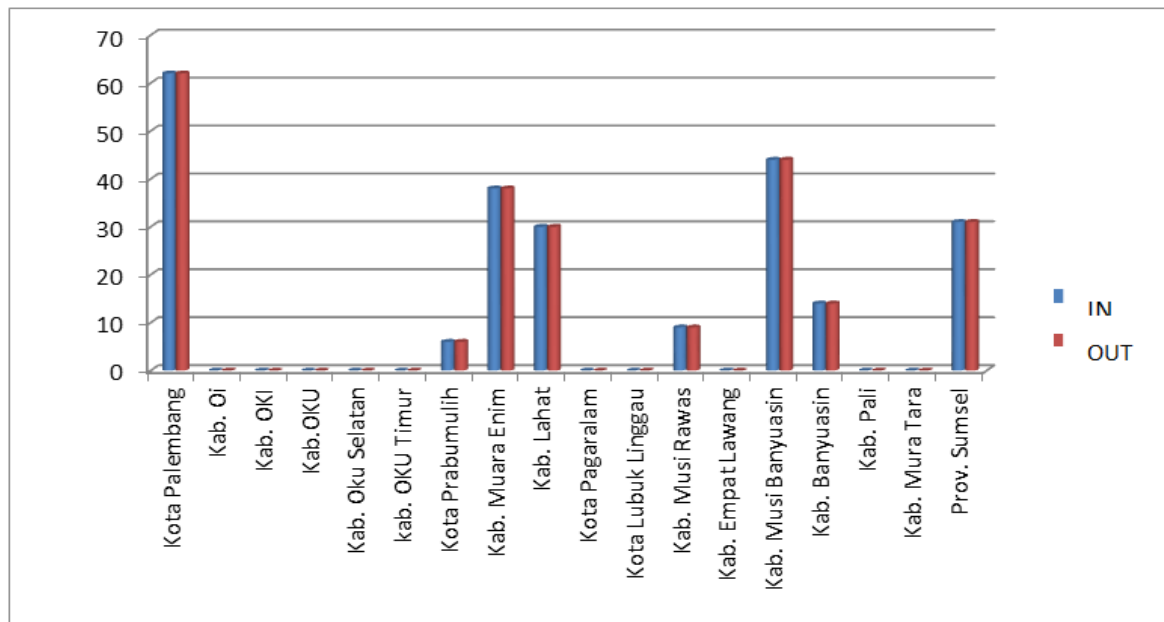
Table 3 Institutional, Various disputes, the Settlement Period, and the Basic Law

1.	Bipartite	a) Disputes Over Right b) Conflict Of Interest; c) Disputes Layoffs; and d) Disputes Between Labour Union Within One Company.	30 Working Days	Article 6 until 7 Of PPHI Regulation
2.	Coalition, Or	a) Conflict Of Interest; b) Disputes Layoffs; and c) Disputes Between Labour Union Within One Company.	30 Working Days	Article 17 until 28 of PPHI Regulation
3.	Arbitrations, Or	a) Conflict Of Interest; and b) Disputes Between Labour Union Within One Company.	30 Working Days	Article 29 until 54 of PPHI Regulation
	Mediation	a) Disputes Over Right	30 Working Days	Article 8 until 16 of



Graph 2 Data of Mediation Provincial And Municipal/District in Manpower and Transmigration Official of South Sumatera In 2014

Source: Manpower and Transmigration Official First Level of South Sumatera Province Year 2015



Graph 3 Data of Mediation on Province and Cities Manpower and Transmigration Official First Level of South Sumatera Province In 2015

Source : Manpower and Transmigration Official First Level of South Sumatera Province Year 2015.

4.2. Constraints in Manpower and Transmigration Official First Level of South Sumatera Province

The same pattern of three data in the tables above, can be explained several thing

1. Dispute Resolution in Manpower and Transmigration Official First Level of South Sumatera Province, district / city only conducted with bipartite and Mediation, but no settlement by arbitration and conciliation system. Completion bipartite implemented at the enterprise level and mediation in the Province/ District / City.

Alternative Dispute Resolution Bipartite and Mediation in Industrial Relations Disputes
Settlement

2. The settlement of dispute by way of mediation could be completed by the Manpower Office of South Sumatra province and some Manpower District and the City. In some districts / municipalities no settlement cases and no cases in and out, because:

- a) There is no mediator at the district / city, and
- b) There is a mediator, but prefer a settlement in a mediator in the Province or Palembang City with reasons (feel more fairly and impartially, and closer than place of residence, such as around the city of Palembang).

3. The number of cases in and out look the same, like in Palembang, get in 41 cases and out 41 case as well. This is due to the mediator must complete a maximum of 30 cases weekdays, if not be resolved, then the case transferred to PPHI.

4. The mediator only 6 mediator in Table 1, and 8 mediator in Table 3 at the Regency / City and South Sumatra province, until the year 2016. It should be district / city can apply to study the prospective mediator to Manpower and Transmigration Official of Republic Indonesia. The education in Bogor with Manpower and Transmigration Official of Republic Indonesia's budget.

5. If the worker / employer, or both did not attend mediation hearing calls with different reasons: a) workers no charge transport / accommodation; b) workers already employed elsewhere.

6. If one of the parties was called three times is not facing the mediator, the mediator issued a recommendation decision to be resolved in PPHI. [22]

To see the flow of the settlement of dispute out of court, can be seen in the chart this below [23]

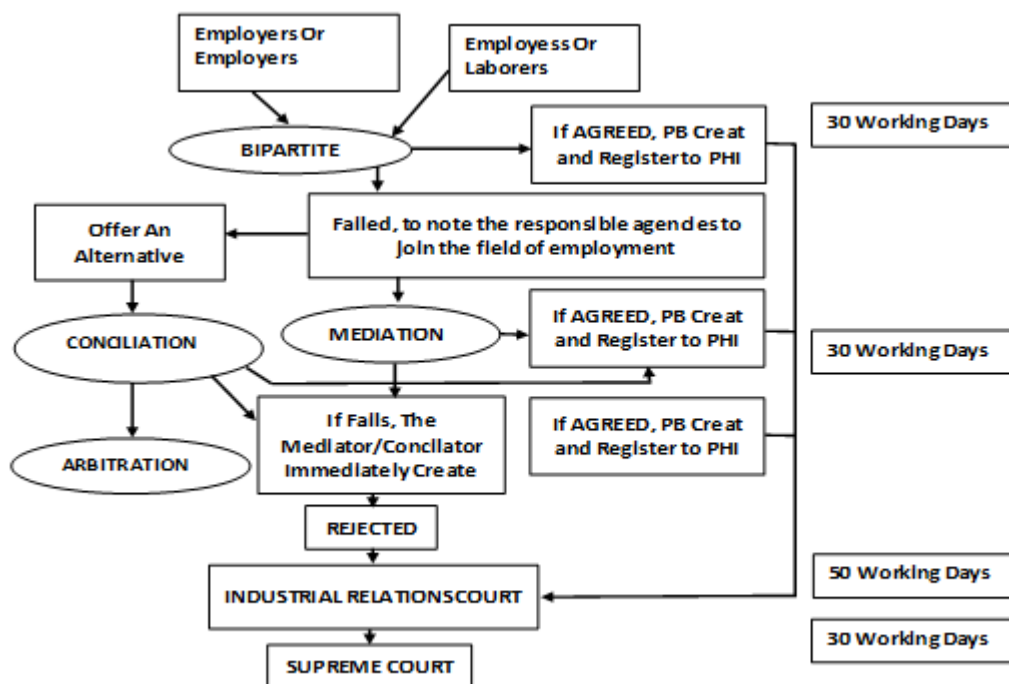


Figure 1 Industrial Disputes According To Act Number. 2 Year 2004

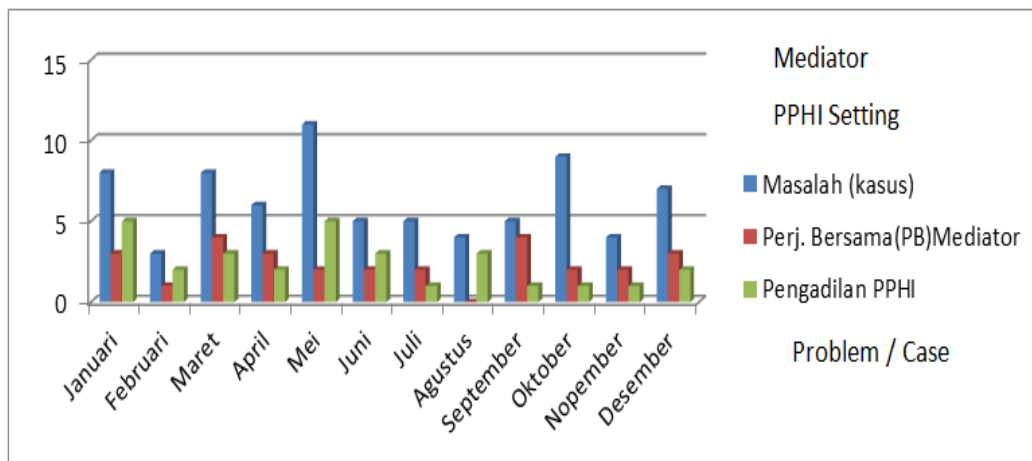
Source: Abdul Khakim, *Indonesian Labour Law Basics* 169 (Citra Aditya Bakti, Ltd. 2009)

Description:

- Through bipartite settlement, conciliation, arbitration, or mediation in the settlement of the outside, each time 30 working days or a total of 120 working days.
- The form of the arbitration decision is binding and enforceable judgment remained (*inkracht*).
- Against the arbitration decision can't be submitted to the labor court, but can petition for annulment to the Supreme Court (Section 52 of Act Number. 2 Year 2004).
- Industrial relations court ruling does not recognize an appeal to the courts high, and to:
 - The types of conflicts of interest and disputes antarserikat worker / labor union in one the company is the first and last decision as well as fixed, meaning it can not filed an appeal to the Supreme Court attempts.
 - Type of rights and disputes over termination of employment is the first judgment and can be directly put forth the effort cassation to the Supreme Court.

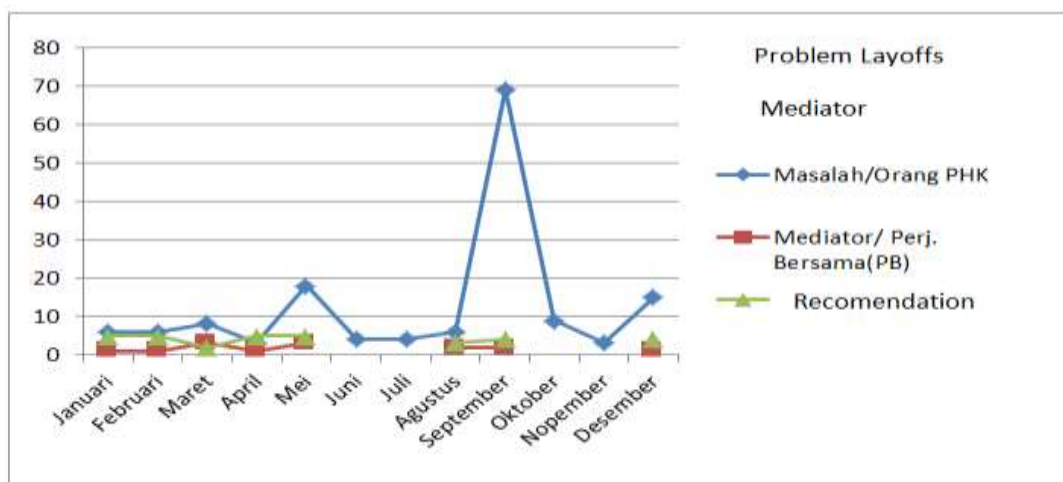
4.3. Constraints in Manpower and Transmigration Official of Palembang

Constraints Manpower and Transmigration Official Dispute Resolution in Palembang City can be seen below:



Graph 4 Data of Mediation Manpower and Transmigration Official of Palembang City In 2013

Source: Manpower and Transmigration Official Level II of Palembang City, Year 2015.



Graph 5 Manpower and Transmigration Official of Palembang City's Data of Mediation In 2014

Source: Manpower and Transmigration Official Level II of Palembang City, Year 2015.

Alternative Dispute Resolution Bipartite and Mediation in Industrial Relations Disputes Settlement

PPHI same pattern of both the data in the tables above, can be explained several things:

- The dispute in the Company should be resolved through bipartite negotiations at the company. If without bipartite, then the mediator at the provincial and district / city reject the case
- If the company or the employee without direct bipartite bring it to mediators and accepted to be resolved, it can be sued by one of the parties, namely: workers or employers.
- A worker who was accompanied by lawyers, advocates can assist the worker has completed bipartite in the company. If the advocate call the company to advocate office for bipartite, no authority.
- In Table 2 above in September there were 69 people were laid off, the company was taken over by other companies. They laid off first with his right to severance pay or known as UP, gratuity known as UPMK and compensation known as UPH. Then new entry into a new company, with terms of zero years. But there are also due company cannot anymore.
- Workers are not willing to implement the bipartite despite having been summoned by inappropriate by Companies, firms applying layoffs with through mediation.
- If companies / workers in the district of OKU or district / city, propose mediation to Province / town Palembang, while in the district of OKU already mediator, the mediation remain in the district of OKU only. Unless there is a written delegation of Manpower and Trasmigration of OKU District.
- Mediation in Provincial / District / City, if it can be agreed by both parties, the agreement made Joint or known with *Working Agreement* and in Indonesia known as PB and established by the Industrial Relations Court or known as PHI. If there is dissenter from the company or the employee, then it can be executed.
- If the parties or unilaterally reject the mediation, the mediator made suggestions and forwarded by Kadisnaker trans letter to PHI. Decision mediation can be: a) recommendation to PHI; b) working again, and c) along Agreement PB set new Bill.
- Decision PHI also rejected, it demands an appeal to the Supreme Court.[24]

Another obstacle mediator by Tri Haryanto, from Manpower and Trasmigration Ministry of Republic Indonesia among others:

- Mediator in Dispute Resolution, often experience obstacles in carrying out mediation, because employers or workers had no goodwill to resolve the dispute with discussion. Each party to survive the demands of each, especially entrepreneurs has been accompanied by the "lawyer". While workers are rarely accompanied by the lawyer in the case.
- Mediator, most settle disputes layoffs, while other disputes rarely happen. No one disputes the right time (overtime not paid employers).
- The issue there are ten (10) districts / municipalities in South Sumatra Disnakertrans not their mediator, it could be caused, among other things: a) to act as a mediator required ASN ; 2)educated Strata 1; and 3) there is a dodge for students to become mediators, with more chose to become administrative personnel only.
- Never handle cases of unpaid overtime. Mediation conducted in the province, entrepreneurs appeal to the Ministry of Manpower and required to pay as much overtime working hours then. However, employers still are not willing to pay, even appealed to State Administration Court or known as PTUN.
- If in the district. East OKU (for example) there is no mediator, then the local request from Head of Manpower and Transmigration Official's request to handling mediation in Cities / Rail (Main OKU District) with consideration the difficulty of transportation and

accommodations if the employer / employee to Province Manpower and Transmigration Official.[25]

Interviews with Tri Haryanto basically the same as the mediator umatra South and Palembang, but at a certain point needs to be analyzed:

- Assistance by lawyers against one party and not to complicate the settlement dispute. The mediator must: a) give the sense that the lawyers are subject to the system mediation set in PPHI Regulation; b) if it does not agree with rejecting the mediation mechanism and advocated for the mediator in the settlement forwarded PHI.
- Regency / City that there is no mediator, to implement temporary mediation can asks mediator in District / City adjacent. But for the long term, should be Provincial mediator assignment request to remain in the region. Mediator in the province and the city of Palembang of 2 (two), should fill the empty formations mediator in the district / city is. Because community workers / businessmen should get good service, as part of the Good Government.
- Head of Manpower and Transmigration Official in province should give special attention to the many Cities that there is no mediator, to assign administrative personnel educated strata 1 following Education and Training of Candidates mediator in the Minister of Manpower and Transmigration of Republic Indonesia

Opinion of Haji. Kasiran, constraint bipartite / mediation that occurred in Jakarta:

- No communication or goodwill of one of the parties to resolve the issue dispute;
- The ability of Plant Level Units of Labour Union of Indonesia to help bipartite / mediation limited expertise in lobby with entrepreneurs;
- If the verdict mediation in the Collective Agreement to enable the worker to work again, but one the parties are not willing to accept work (employers) or workers no longer willing to work;
- Preferably at bipartite level, more effective consensual settlement. although layoffs
- The workers received severance money is less than the provisions of
- Act Number 13 Year 2003 about Manpower.[26]

While suggestions H. Kasiran, in the completion of the settlement of dispute with the ADR system:

- Better completion of consensus in the company, despite the severance pay workers receive less than they should. If completed bipartite procedure / mediation, employers (Human Relationship Development as known as HRD/Lawyer) stalling until Relations Court Industrial (appeal, cassation and judicial review), making the workers withdrew from the process these jurisdictions.
- Peace between workers and employers, is better.
- Money severance, gratuity and compensation benefits to workers a maximum of 32 times the monthly wage, among the highest in the world.
- Severance pay is greater if workers being dismissed unilaterally, making the company dodged lift the permanent workers or known as PKWTT, but using a short labor agreement (Outsourcing / PKWT) with a severance payment of 1 (one) or 2 (two) months wages.
- Completion according to Dispute Resolution Regulation, in practice it is still better to Act Number 22 Year 1957 about Labor Disputes. Especially settlement conducted by P4D / P4P, better defend the interests of workers and no partisanship with reason more human. The company will be warned verbally / writing, if there is an element of good will bad defer to linger in order to placate the workers forced the company.

The opinion of Mark S. Sidauruk:

- The collective agreement (PB) bipartite in rare company usually passed mediation in Manpower, because each party to survive on its own demands.
- Prompts mediators when mediation, often linger by the HRD / Lawyers company for the completion of PHI, the real problem is simple.
- The decision PHI by HRD / Lawyer forwarded to limited liability company (appeal), also MA (cassation), making workers to stop the proceedings.
- If the problem is to mediation, the issue in the interests not demand more rights.
- Other efforts better private settlement directly with employers as long as there opportunity to itu.[27]

Dissenting opinion of Sumantri Wiranegara, especially those that occur in the Sunan Rubber Kertapati, Ltd. Palembang, that of all disputes layoffs had not been resolved by bipartite and mediation, according to Law, Dispute Resolution. UP demands, UPMK, UGR of all workers in accordance with the Labor Law, resolved fairly in the company alone. It was because the workers do not want the bipartite settlement and mediation; sometimes accompanied by means of pressure / intimidation. The company dealing with wise and grant these demands, all the work of securing peace intimidation after a worker was dismissed.[28]

While within the Bumi Putera Insurance, Ltd., disputes are dealt with bipartite / mediation and there is also the bipartite consultation and directly without mediation. The explanation as following:

- Case workers are working as outsourcing to cooperatives in the corporate environment, dismissed because it is old (aged 61 years) and often sick. The worker is dismissed, but is concerned objected and reported to Manpower. After that, the case was resolved by bipartite and mediation.
- Case workers (aged 45 years) often ill about 1 (one) month later healthy and sick again. The worker then asked to stop by the way she sued bipartite and mediation, demanding severance pay. If the company dismiss directly and paying severance pay, cannot be justified by the Central Office (Jakarta). If through the lawsuit bipartite and mediation, then there is no reason Branch Office to pay the severance money.[29]

Thoughts from Mark S. Sidauruk, Sumantri Wiranegara, and Amancik; need to be underlined:

- Practice on the ground is far different from the will of the legislators, especially through bipartite settlement and mediation.
- Although the bipartite settlement and mediation is considered fair for the parties, but very detrimental to the national workers because the company is not willing to fixed employment agreement (PKWTT). Selection of companies with PKWT form (contract) or Outsourcing, workers made powerless to resist the will of the company adverse.
- The company also thinks better settlement of disputes with workers by consensus, without having bipartite and mediation which considered quite time consuming long.
- Practice shows the company, often delaying a settlement with PHI so that it can continue to appeal and cassation. Party workers become incapable to continue the process, because time-consuming and costly in conditions does not work.

4.4. PPHI More Quick, Cheap, Simple

PPHI Quick, cheap, and simple; is already set out clearly in PPHI regulation. The parties no later than seven working days after receiving the delegation settlement of disputes the

mediator should have conducted an investigation regarding the case and immediately held a mediation session. It would be faster if both parties have agreed on the level bipartite (company), so that when it filed for mediation at the Provincial / District / City, can be directly created the Collective Agreement (PB). PB shall be sent by letter to the IRC's Head Official of Manpower and Transmigration Official set (inkracht). If the workers / employers cannot accept the decision of the mediation, the following efforts:

- The longest completion deadline of 30 working days, but only if more than 30 days, then mediator made suggestions to be resolved in the Industrial Relations Court.
- The dispute in the level of mediators, there is no cost of registration until the mediation session ends.
- Workers are not willing to implement the bipartite despite having been summoned by inappropriate by company, the company applying for the job cuts through mediation.[30]

Practice shows the company, often delaying completion by forwarding to PHI so that it can appeal and cassation. Party workers be unable to continue the process, because time-consuming and costly in the condition it does not work (see: interview with Mark S. Sidauruk above).

Industrial disputes studied from the economic aspect, because the rate of growth slow-moving economy. Analysis of the ILO, Michiko Miyamoto et al, stating trend showed that industrial disputes occur when the economic growth rate move low, where most disputes associated with termination of employment (FLE). Related the economic slowdown in 2015, this historical trend needs to be considered more.[31]

Table 4 Institutions Labor Market and Strife Industrial Trend

	Information	2009	2010	2011	2012	2013
	Disputes Referred	NA	4.242	3.821	2.753	2.861
	Cases Resolved	NA	3.429	1.456	2.352	2.468
	Case Deferred	413	311	348	401	393

Source: Directorate General of PHI and Social Security, Processed by Pusdatinaker.

Settlement of disputes through dialogue based on the above mechanisms, in line with mediation in the settlement of dispute settlement. Hope when the mediator to work in earnest and impartially and based professionalism as a mediator, the mediator goal as ASN well done. The mediator must understand that the work terse but, carried out by the mediator as ASN on the terms of Act Number 5 Year 2014 about the State Civil Apparatus (ASN).

4.5. Decision Mediation Analysis

Mediation verdict Manpower and Transmigration Official of South Sumatra Province, in some cases as follows:

Table 5 Mediation verdict Disnakertrans Prov. Sumsel

No.	Case	Worker	Company	Result Of Mediation	Information
1	Layoffs Out Contract	M. Ridwan	Multi BA,Ltd.	PB	Paid Severance Pay Rp.4.740.000,-
2	Unilateral Layoffs	Supri	Jalur Sutra,Ltd.	PB	Money Deal
3	Layoffs Major Offenses	Abdul Gafur	Buluh Cawang,Ltd.	PB	Wage paid 1 mont, 1 Month PMK, Salary March 2015, The Res Of The Time Off (Compesation)

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4	Layoffs Wok Defaulters	Selamet	BNI Syariah,Ltd.	Recomendation	Answer the parties no later than 10 days
5	Unilateral Layoffs	M. Umar and this friends (5 people)	Hotel Indriyasari O.I.	Recomendation	Answer the parties no later than 10 days

Source: Mediation Report of Manpower and Transmigration Official of South Sumatera Province[32]
Mediation Analysis Decision of Manpower and Transmigration Official of South Sumatera Province, as Follows :

Mr. Ridwan's Case

The dismissal of M. Ridwan with PKWT status extended for 2 years and 3 months, terminated without UP. The reason employers, workers often leave the task and did not go to work, then laid off for the sake of law without UP. After the results of mediation and consultation, workers received severance pay and compensation leave the rest of Rp. 4.74 million, -

Normative considerations:

Article 168 Labor Law

- The workers / laborers who are absent for 5 (five) working days or more in a row without explanation in writing that comes with valid evidence and have been called by the employer 2 (two) times if properly written can be terminated for qualified resign.
- The written statement with valid evidence referred to in paragraph (1) shall be submitted no later than on the first day of the worker / laborer comes to work.
- The termination of employment referred to in paragraph (1) worker / laborer entitled to receive compensation pay in accordance with Article 156 (4) and given a severance payment the magnitude and the execution of the work agreement, company regulations, or collective labor agreement.

Supri's Case

Workers: Supri with PKWTT status for 11 years, the salary of Rp. 2.700.000, - laid off for no reason andnot paid UP. Supri demanding UP, UPMK and UPH. Employers: The Silk Road, Ltd. could not afford the UP, UPMK, UPH great. After mediated andthe results of consultation kinship, reached an agreement set forth in the Agreement Joint which will be held on December 15, 2015. The amount of payment is not mentioned.

Normative considerations:

Article 156

1.In the event of termination of employment, the employer is obliged to pay severance and or gratuity and compensation entitlements.

2.The calculation of severance pay referred to in paragraph (1) at least the following:

- The tenure of less than 1 (one) year, one (1) month of wages;
- The working period of 1 (one) year or more but less than 2 (two) years, two (2) months of wages;
- The work period of 2 (two) years or more but less than 3 (three) years, three (3) month payment;
- The working period of 3 (three) years or more but less than 4 (four) years, four (4) monthswage;

- The working period of 4 (four) years or more but less than 5 (five) years, five (5) monthswage;
- The working period of 5 (five) years or more, but less than 6 (six) years, six (6) monthswage;
- The working period of 6 (six) years or more but less than 7 (seven) years, seven (7) months wage.
- The working period of 7 (seven) years or more but less than 8 (eight) years, eight monthly wages;
- The working period of 8 (eight) years or more, nine (9) months of wages.

3. The calculation of gratuity referred to in paragraph (1) shall be determined as following:

- The working period of 3 (three) years or more but less than 6 (six) years, two (2) months wage;
- The working period of 6 (six) years or more but less than 9 (nine) years, three (3) months wage;
- The working period of 9 (nine) years or more but less than twelve (12) years, 4 (Four) months of wages;
- The service life of twelve (12) years or more but less than 15 (fifteen) years, 5 (Five) months of wages;
- The working period of 15 (fifteen) years or more but less than 18 (eighteen) years old, 6 (Six) months of wages;
- The working period of 18 (eighteen) years or more but less than 21 (twenty-one) years, seven (7) months of wages;
- The working period of 21 (twenty-one) years or more but less than 24 (twenty-four) year, eight (8) months of wages;
- The working period of 24 (twenty four) years or more, 10 (ten) months of wages..

4. Money replacement rights or entitlements as referred to in paragraph (1) shall include:

- The annual leave not taken and not fall;
- The cost of transportation to go home for the workers / laborers and their families place where workers / laborers received work;
- The replacement housing as well as treatment and care are set at 15% (fifteen percent) of severance pay and / or gratuity for the qualify;
- Other matters specified in labor agreements, company regulations or agreements of work together.

Settlement with the pattern of mediation, should be based on wage theory exemplary. This theory the principle of family is one family or one whole company. Side workers are not separated by the employer, in the sense of face to face between the ruling with the ruled. Then, if there are problems between the two sides, the settlement issue resolved by deliberation and consensus by not prioritizing the completion of something "pattern bargaining" (bargaining position) that would cause there are no winners and no lost. Local wisdom philosophy was elevated to a national wisdom, without anyone winning and losing and nothing is ashamed.[33]

State Civil Apparatus (ASN) is a mediator in the environment Kemenakertrans, acting carrying out mediation in the settlement of industrial disputes. ASN in the implementation duties stipulated in Act Number 5 Year 2014 about State Civil Apparatus (ASN), work professionally bound with a variety of principles, codes of ethics and behavior.

4.6. Mediator as the State Civil Apparatus (ASN).

Mediator as ASN in Manpower, subject to the Act Number. 5 Year 2014 On the ASN. Policy Implementation and Management of ASN is based on the principles of: *legal certainty; professionalism; proportionality; alignment; delegation; neutrality; accountability; effective and efficient; open system; non-discriminatory; unity and integrity; justice and equality and; welfare* (Article 2).

Code of ethics and code of conduct in Article 3 paragraph b aims to safeguard the dignity and honorary ASN. Code of ethics and code of conduct in Article 5 in order to regulate the behavior of ASN:

- perform their duties honestly, responsibly, and high integrity;
- perform their duties carefully and discipline;
- serving respectfully, politely, and without pressure;
- carry out their duties in accordance with the provisions of the legislation;
- carry out their duties in accordance with orders from superiors or Authorized Officer as far as not contrary to the provisions of the legislation and ethical governance;
- maintain confidentiality concerning state policy;
- use of state property wealth and responsibly, effectively and efficiently;
- guard against conflicts of interest in performing their duties;
- provide the information correctly and not misleading to others who require Related information official interest;
- not abuse the internal state information, tasks, status, power, and position to gain or profit or benefit for themselves or for others;
- ASN uphold basic values and always maintain the reputation and integrity of the ASN; and implement laws and regulations regarding employee discipline ASN.
- implement the provisions of law of ASN official discipline.

4.7. ASN Professional Services as Majesty

To make the ASN as a profession are respected, upheld and cherished as state assets, putting Act of ASN as: *first*, a profession that has a standard professional services, basic values, codes of ethics and professional conduct, education and development profession, and has a professional organization that can maintain the basic values of the profession (Article 126 from Act of ASN).

Second, ASN as a profession, through the law every bureaucrat must have a standard professional services, implement basic values professional code of ethics, and must develop expertise profession periodically.

Third, the merit system in ASN policy has been there even before the enactment of Law ASN.

Article 17 paragraph (2) of Act Number 43 Year 1999 regarding changes to Act Number 8 Year 1974 about the Principles of Civil Apparatus (Employment Law) states that the adoption of ASN in a position implemented based on professional principles in accordance with the competence, work performance, and levels of specified rank for the job and other objective requirements without regardless of sex, ethnicity, religion, race, or groups.[34]

It's implementation, the policy is not transformed well within the integrated management, thus filling the positions do not precisely based on merit. Conditions before filling the position requirements are not applied proportionally. As a result of implementing regulations of Law Personnel who have emphasized the competence and performance in the management of ASN, in practice we find that rank (seniority), and the proximity to political / favoritism / patronage became a condition that determines in each filling positions (closed career system) [35]

Improving the quality of ASN mediator as a reference in improving the quality: firstly, qualified and professional mediator in order to create the conditions within the government clean, competitive, neutral, and authoritative.

Second, the quality improvement continues to be done by the government to stimulate the need the public will be a public service, namely by training and education, positions and levels, career development, promotions and transfers, performance appraisals, salary, awards, pension, and the old age guarantee, as well as empowerment and protection.

Third, the government will soon issue a government regulation related to the technical aspects of ASN's implementation of the Act to encourage and optimize the human resource development ministry official public within the framework of the performance of qualified, competent, and professional. so reform employment can go hand in hand with the high quality of public services towards good government and good governance.[36]

Mediator Services ASN as a noble profession, is one element of public service government through Manpower. State Civil Apparatus Act has mandated that in order to implement the ideals of the nation and realize the goal of the State as stated in the preamble of the Constitution of the Republic of Indonesia Year 1945, need to build a civil state apparatus integrity, professional, neutral and free from political interference, net of practice corruption, collusion and nepotism, as well as capable of organizing public services for the community and able to perform the role as an adhesive element of national unity based Pancasila and the Constitution of the Republic of Indonesia Year 1945.

5. CONCLUSION

1. Disputes industrial relations, is part of the dispute in general that may occur without seeing the place, time and condition. Efforts to enforce substantive justice system through progressive labor laws, to execute the law for humans. Although the law. PPHI the basis for making a decision, but when implemented it is creating a law of justice, legal certainty and benefits in the community. Settlement of dispute through bipartite and mediation, should base on the philosophy of Pancasila to determine a selection through deliberation filled with the spirit of brotherhood: a) meeting to hear each other and expressed the wish; b) looking for a solution or common ground on the issue at hand; c) make peace with responsibility each; e) fix for any consequences arising); and f) support each other.

2. When viewed from the perspective of "Theory of Wages Exemplary", the principle of the family is one family or the whole unit within the company. Party workers are not separated by party businessman, in a sense, face to face between the rulings to the ruled. Then, if there is problems between the two sides, the settlement of these problems resolved by consultation and consensus by not prioritizing the completion of something with a pattern of "bargain" (bargaining position) which will cause there are no winners and losers. Philosophy local wisdom was named a national wisdom, without nothing to lose and win and nothing to shame.

3. Institutional bipartite and mediation in the settlement of dispute, timed for each of a maximum of 30 working days. The ability of employees and mediators: the knowledge, expertise, skills, attitudes, behavior. Similarly, technical skills, conceptual skills, and

interpersonal relationship skills, very determine the implementation of the settlement of dispute that may ultimately be implemented quickly, accurately, fairly, and cheap.

KEYNOTES

1. Zulkarnain Ibrahim, *Arrangement and Enforcement of Wage Law in the Labor Law System*, Islamic Indonesia University of Law Journal *Ius Quia Iustum* 656 (October ed, 2015) and see also: Agusmidah, *Dilemma of Labor Law, Review of Legal Politics* 22-24 (Softmedia,Ltd.2011)
2. See e.g, Satjipto Rahardjo, *State Law What To Happines Its Peoples* 23 (Genta Publishing,2009)
3. Abdul Khakim, *Indonesian Labor Law Basics* (Citra Aditya Bakti,Ltd.2009)
4. Tata Wijayanta & Ari Hernawan, *Evaluative Study of the Role of Ad Hoc Judges in Industrial Relations Dispute Settlement at the Yogyakarta Industrial Relations Court*, 9 *Faculty of Law Yustisia Journal Gadjah Mada University* 9 (88th ed, 2014)
5. Bahder Johan Nasution, *Freedom to Associate Function to Labour in Pancasila's Industrial Relationship*, Master of Law Program in Jambi University 8 (January ed. 2015)
6. Hermeneutics, from greek word is, hermeneuticos. That means is science and theory of interpretation that aims to explain the text and description, both objective (grammatical meaning words and variations historical) and subjective (author's intent or the will) .See: Anthon F. Susanto, xi *Non-Systematic Legal Studies* (2010). See also: Zulkarnain Ibrahim, *Regulation of Wage Law in an Effort to Realize Substantive Equitable Social Welfare*, Dissertation of Doctoral Program of Faculty of Law Sriwijaya University 92 (2014).
7. Widodo Dwi Putro, *Criticism Legal Positivism Paradigm* 132 (Genta Publishing,2011). See: B.Arief Sidharta, *Indonesian Legal Studies* 30 (Faculty of Law Parahyangan University,2010)
8. In the scientific process common hermeneutical circle,e.g. a reciprocal process between overall and special rulings on the interpretation of a scientific theory. Hermeneutics have influence great especially in the theory of legal discovery. Proposition hermeneutics that people should qualify the facts in light kaedah-rules and interpret the rules in the light of the facts, including the Legal discovery paradigm of theory today.See: J.J. H. Bruggink, *Rechtsreflecties, Grondbegrippen uit de rechtstheori* 209 (Citra Aditya Bakti,Ltd.1999)
9. Jazim Hamidi, *Get to Know More about Legal Hermeneutics (Philosophical Perspectives and Interpretation Methods)*, See: Sri Rahayu Oktoberina & Niken Savitri, *Points of Thoughts in Law,Commeccorate 70th years of Prof.Dr.B.Arief Sidharta* 90 (Refika Aditama,2009).
10. The purpose of legal dogmatic approach is to examine how the law has, in the sense of collecting, explained, systematize, analyze, interpret and assess the norms of positive law. But also it should be understood that the "Law" is a multifaceted phenomenon because it cannot be separated from society. Philosopher Roman, Cicero (106-43 BC) had warned about this. "Ubi societas ibi ius", "he said. Where there is society, there is no law. Thus, the more complex characteristics of a community, it can be ascertained, will be more complex the law as they manifest there; See: Arief B.Sidharta, *Flows Mapping of Legal Thought and Methodological Consequences* (2009), See also: Sulistiyowati Irianto & Shidarta, *Legal Research Methods, Constellation and Reflection* 151 (Obor Indonesia Foundation,2009).
11. Marwah M. Diah, *Restructuring of State-Owned Enterprises in Indonesia, privatization or corporations* 52 (Literata,2003). See also : Ibrahim, *Prospects of State-Owned Enterprises and Public Interest* 49 (Citra Aditya Bakti,Ltd.1977).

12. Hajjah Yuhari Robingu, *Industrial Relationship Dispute Settlement Mechanism* (2009). See also: Satya Arinanto & Ninuk Triyanti, *Understanding The Law from Construction until Implementation* 53 (Rajawali Press,2009).
13. See e.g, Hajjah Yuhari Robingu *Industrial Relationship Dispute Settlement Mechanism* (2009)
14. The conflict between workers and employers have occurred over time in many parts of the world. The latent conflict more prominent since the industrial revolution (1776), when the transformation occurred massive work culture from farming communities who worked in the fields, fields, and gardens become an industrial society that works in factories. Various industrial relations issues underlying the conflict, including the wages, working hours, leave of absence, layoffs, allowance, until welfare cases which are criminal, such as theft and violence. The fact is not the need to happen, if good labor and an employer as the subject of law understood correctly labor law, especially in regard to their contract.
15. Abdul Khakim, *Indonesian Labour Law Basics* 150 (Citra Aditya Bakti,Ltd.2009)
16. See e.g, Abdul Khakim, *Indonesian Labour Law Basics* 152-153 (Citra Aditya Bakti,Ltd.2009)
17. Huala Adolf, *International Economic Law, An Introduction* 190 (Raja Grafindo Persada,Ltd.1998)
18. Legal basis of various strife arranged in various regulation such as: First, Act Number 21 Year 2000 about States Laborers (State of Republic Indonesia Gazette Number 121 Year 2000; Addition of State of Republic Indonesia Gazette Number 3989 Year 2000); Second, Act Number 13 Year 2003 about manpower (State of Republic Indonesia Gazette Number 39 Year 2003; Addition of State of Republic Indonesia Gazette Number 4279 Year 2003); Third, Act Number 2 Year 2004 about Industrial Relations Disputes Settlement (State of Republic Indonesia Gazette Number 6 Year 2004 and Addition of State of Republic Indonesia Gazette Number 4356); Fourth, Decree of the Minister of Manpower and Transmigration of Republic Indonesia Number:KEP.92/MEN/VI/2004 on the appointment and dismissal of a mediator and procedures for mediaton work; Fifth, Regulation of the Minister of Manpower and Transmigration of Republic Indonesia Number:PER.10/MEN/V/2005 on the appointment of and dismissal a conciliators and procedures for conciliation work; and Sixth, Regulation of the Minister of Manpower and Transmigration of Republic Indonesia Number:KEP.02/MEN/I/2005 on the procedures for registration, testing, granting and the repeal of the sanctions for arbitrators of industrial relation. See also: Alan Boulton, *The Manual Mediation, Concilliation and Arbitration* 14 (International Labour Office.2006).
19. Huala Adolf, *Trade Dispute Settlement in World Trade Organization (W.T.O)* 30 (Bandar Maju,2005).
20. Industrial relations according to Payaman J.Simanjuntak , is the relationship between all parties related or interested over production process goods or services in an enterprise .The object is nuntuk created a secure relationship and harmonious between parties the , so can increase productivity business; See: Ugo & Pujiyo, *Law Procedure of Industrial Relation Dispute Settlement* 3 (Sinar Grafika,2011).
21. See e.g, Abdul Khakim, *Indonesian Labour Law Basics* 155-156 (Citra Aditya Bakti,Ltd.2009).
22. Interview with Eky Zakia, Firdaus and R.M. Edy Ali, PPHI Mediation, in Manpower and Transmigration Official of South Sumatera Province. (Sept,5,2016) (on file with author).
23. See e.g, Abdul Khakim, *Indonesian Labour Law Basics* 169 (Citra Aditya Bakti,Ltd.2009).

24. Interview with Pairin, Head Section of PPHI Mediation Palembang City, in Manpower and Transmigration Official of Palembang City. (Sept,27,2016) (on file with author).
25. Telephone Interview with Tri Haryanto, ex- Head Division of PPHI in the Minister of Manpower and Transmigration of Republic Indonesia (October 3,2016) and was interviewed in the Minister of Manpower and Transmigration of Republic Indonesia (August,2013)
26. Telephone Interview with Haji Kasiran, Chairman of Federation of Indonesian Tourism National Level (October 8,2016) and was interviewed before in Wage Seminar in Mercure Hotel Ancol,Jakarta (2013). (on file with author).
27. Telephone Interview with Markus S.Sidauruk, Chairman of Education, Training and Civil Servants Union Federation National Level (October 8,2016) and was interviewed before in Education, Training and Civil Servants Union Federation or known as SBSI Central Office (2013). (on file with author).
28. Interview with Sumantri Wiranegara, Member of Indonesian Businessman South Sumatera Region and ex Direction of Sunan Rubber Palembang,Ltd. (October 8,2016). (on file with author).
29. Interview with Amancil, Head of Region Office of Asuransi Bumi Putera South Sumatera,Ltd. (October 8,2016).
30. *See e.g.*, Interview with Pairin, Head Section of PPHI Mediation Palembang City, in Manpower and Transmigration Official of Palembang City. (Sept,27,2016) (on file with author).
31. *See e.g.*, Jazim Hamidi, *Get to Know More about Legal Hermeneutics (Philosophical Perspectives and Interpretation Methods)*, See: Sri Rahayu Oktoberina & Niken Savitri, *Points of Thoughts in Law,Commeccorate 70th years of Prof.Dr.B.Arief Sidharta 53* (Refika Aditama,2009).
32. This secondary data (the result of mediation) is a substitute for the interview with the parties in dispute, and the information is believed to be more objective.
33. Zulkarnain Ibrahim, *Substantive Wage Laws (Study of the Exemplary Wage Theory)*, Faculty of Law Diponegoro University of Law Problems Journal 297 (42th ed, 2013).
34. Eko Prasodjo & Laode Rudita , *State Civil Servant Law: Building Professionalism of State Civil Apparatus*, Centre of Study and Research of Officialdom of State Officialdom Official of Policy and Management Civil Servant Management 15 (June ed, 2014).
35. *See e.g.*, Eko Prasodjo & Laode Rudita , *State Civil Servant Law: Building Professionalism of State Civil Apparatus*, Centre of Study and Research of Officialdom of State Officialdom Official of Policy and Management Civil Servant Management 15 (June ed, 2014).
36. Hayat , *Improving the Quality of Public Service Apparatus in the Framework of Act Number 5 Year 2014 concerning State Civil Apparatus*, Centre of Study and Research of Officialdom of State Officialdom Official of Policy and Management Civil Servant Management 44 (June ed, 2014).

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