

## The Power of Mediator Suggestions in Mediating the Settlement of Pancasila Industrial Relations Disputes Outside the Court

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### Abstract

One of the settlements of disputes outside the court, mediation is understood as a settlement that is non-judgmental, fast, inexpensive, and provides access to the disputing parties to obtain justice or a satisfactory settlement by means of a win-win solution. The role of an industrial relations mediator is urgently needed to achieve harmonious industrial relations. The mediator becomes a point of contact who plays an active role in settlements outside the court. The strength of the mediator's suggestion in mediation is something that greatly determines the continuity of the settlement process because it can be a dispute resolution up to the Industrial Relations Court (PHI) if the negotiation and the mediator's written recommendation are not accepted by one or both parties. In a formal claim to the Industrial Relations court, a written recommendation is part of the minutes of industrial relations dispute settlement. A written recommendation only has power if a collective agreement is made and is registered with the PHI to get the power to be implemented. Deliberation to reach a consensus through mediation settlement with a written suggestion as one of the settlement methods in Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement has not been optimally implemented as long as it is not registered with PHI to have permanent legal force.

**Keywords:** mediation; Pancasila; industrial relations disputes.

### Abstrak

Salah satu penyelesaian perselisihan di luar pengadilan, mediasi dipahami sebagai penyelesaian yang bersifat tidak memutus, cepat, murah dan memberikan akses kepada para pihak yang bersengketa memperoleh keadilan atau penyelesaian yang memuaskan dengan cara win-win solution. Peranan mediator hubungan industrial sangat dibutuhkan untuk mewujudkan hubungan industrial yang harmonis. Mediator menjadi titik singgung yang berperan aktif dalam penyelesaian diluar pengadilan. Kekuatan anjuran mediator dalam mediasi merupakan sesuatu yang sangat menentukan keberlangsungan proses penyelesaian, karena bisa jadi penyelesaian perselisihan sampai ke Pengadilan Hubungan Industrial (PHI) apabila perundingan dan anjuran tertulis mediator tidak diterima oleh salah satu atau kedua belah pihak. Anjuran tertulis tidak mempunyai kekuatan sebagai syarat formil dalam gugatan ke pengadilan Hubungan Industrial, anjuran tertulis merupakan bagian dari risalah penyelesaian perselisihan hubungan industrial. Anjuran tertulis baru mempunyai kekuatan, apabila dibuat perjanjian bersama dan didaftarkan ke PHI untuk mendapatkan kekuatan untuk dilaksanakan. Musyawarah mufakat melalui penyelesaian mediasi dengan anjuran tertulis sebagai salah satu cara penyelesaian dalam UU Nomor 2 Tahun 2004 tentang Penyelesaian Perselisihan Hubungan Industrial belum optimal dilaksanakan sepanjang tidak didaftarkan ke PHI untuk mempunyai kekuatan hukum tetap.

**Kata kunci:** mediasi; Pancasila; perselisihan hubungan industrial.

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## Introduction

Labor-related problems occur because job opportunities are getting narrower, while the population continues to increase. This condition was exacerbated by the monetary

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crisis that hit various countries, as a result of which many companies were forced to carry out layoffs on a large scale. The logical consequence that cannot be avoided from this condition is an increase in the unemployment rate. Various labor problems can also arise because basic rights are not guaranteed and normative rights of the labor and discrimination in the workplace, causing conflicts that include low wages, health insurance, work safety insurance, old age security, facilities provided by companies, and usually ends with termination of employment (PHK) .

The variety of problems that give rise to conflict cannot be resolved in the shortest possible time by solving problems that are acceptable to the disputing parties (Fitriyani, 2013). or a new conflict/dispute. Likewise in industrial relations, namely the relationship between workers / laborers and entrepreneurs, which is increasingly complex with the development of civilization, there are more disputes between workers / laborers and entrepreneurs in industrial relations. Disputes between workers and employers cannot be resolved by termination of employment or resignation alone, this can worsen the conditions of the employment relationship between workers and employers (Adi, 2010), which indirectly worsen industrial relations if not quickly resolved by taking into account the interests of both parties, namely workers and employers and related parties in industrial relations.

The driving factors for conflict are differences of opinion and views, differences in objectives, incompatibility of ways of achieving goals, negative influence from other parties, competition (Dahlia and Jumiati, 2011), there is a desire from one of the parties to convey excessive desire, lack of understanding of a statutory regulation (Sinaga, 2013) and all of that is because of the interests of one party that the other party does not agree with, or because one party does not carry out the demands of the other, this happens a lot in the mediation settlement.

As one of the settlement of disputes outside the court, mediation is understood as a settlement that is non-judgmental, fast, cheap and provides access to the disputing parties to obtain justice or a settlement that satisfies both parties. The role of an industrial relations mediator is urgently needed to achieve harmonious industrial relations between workers and employers. The current conditions in Indonesia for mediating industrial relations are still relatively minimal. According to data from the Ministry of Manpower and Transmigration, mediators in Indonesia are still minimal, with only 861 industrial relations mediators handling 224,383 companies. Whereas ideally, a minimum of 2,373 Mediators is needed, so that overall there is still a shortage of Mediators of 1,512 Mediators.

The mediator becomes a point of contact who plays an active role in settlements outside the court. However, the existence of a mediator has not been able to satisfy the parties, especially the workers/laborers, who are always in a weak position. From some dispute resolution, the Mediator is more in favor of the employer/entrepreneur. The strength of the mediator's suggestion in mediation is something that greatly determines the sustainability of the settlement process, because it may take a long time for dispute

resolution to reach the industrial relations court if the recommendation is not agreed upon by one or both parties.

Mediation as an option after the bipartite settlement and acting on behalf of the government, is expected to be a neutral mediator to provide a solution that is impartial or partial to one of the parties, because so far there is an opinion that the mediator is more defending the owners of capital. The mediator as a neutral third party serves the interests of the disputing parties and this action is very important for the mediator to take part in the mediation process. In chairing the meeting which was attended by both parties, the mediator has a role to assist, direct and assist the parties to open positive two-way communication, because through well-developed communication will facilitate the process and success of the mediation. In turn, if any industrial relations dispute can be carried out by settlement outside the court, in this case the Industrial Relations Court (PHI), it means that the principle of deliberation and consensus in Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes is achieved, and indirectly the application of Pancasila Industrial Relations in work relations understood and implemented by both parties, namely the worker/laborer and the entrepreneur.

## Research Problems

Based on the above background, the formulation of the problem is taken as follows: *first*, what is the mediation mechanism in resolving industrial relations disputes outside the court?; and *second*, how is the power of the mediator's written recommendation in mediating the settlement of industrial relations disputes?

## Research Method

The research method used in this research is normative juridical. Data collection is done by technique: field research, documentation, and Focus Group Discussion (FGD). The data analysis in this study was carried out qualitatively, namely for qualitative data a case-case analysis was carried out simultaneously, at this stage a temporary conclusion was made on all cases in each research subject.

## Discussion

### **Arrangement of Mediators and Involvement of Workers/Laborers and Entrepreneurs in Mediating the Settlement of the Pancasila Industrial Relations.**

Based on the Guidelines for the Implementation of the Pancasila Industrial Hubungan (HIP), the definition of the HIP is a system formed between actors in the process of producing goods and services (workers, employers, and government) based on the values of Pancasila and the 1945 Constitution, which grows and develops. Above the nationality and national culture of Indonesia. For this reason, as a form of implementation of the working relationship between workers/laborers, employers, and the government, it must

be following the spirit contained in the principles of Pancasila, meaning that all forms of behavior of all subjects involved in the process must be based on the noble values of Pancasila as a whole. In Article 1 number 16 of Law Number 13 the Year 2003 concerning Manpower, it is stated that the meaning of the term industrial relations is a relationship formed between behavior in the process of producing goods and services consisting of elements from entrepreneurs, workers/laborers, and the government based on values. - The values of Pancasila and the 1945 Constitution of the Republic of Indonesia. The implementation of Pancasila Industrial Relations is carried out through: Bipartite and tripartite cooperation institutions; and Collective Labor Agreement

Etymologically, the term mediation comes from Latin, that is *mediare* which means being in the middle. This meaning shows the role that acts as a mediator. In carrying out its duties, the mediator is in the midst of the disputing parties, is in a neutral position and is impartial in resolving disputes, and must be able to maintain the interests of the disputing parties fairly and equally, thereby fostering the trust of the parties in dispute (Abbas, 2009).

The word mediation comes from the English language "*mediation*", which means dispute resolution involving a third party as an intermediary or a dispute resolution mediator and the mediator or person who is the mediator.<sup>46</sup> In legal terminology, the term "*mediation*" means a third party who participates in mixed cases tend to seek a solution.

Mediation is one of the settlements of industrial relations disputes outside the court/non-litigation carried out by a mediator or commonly referred to as a mediator. Basically, the settlement of industrial relations disputes through a mediator is obligatory if the parties do not choose a settlement through conciliation or arbitration after the institution responsible for manpower affairs offers it to the parties.

In social life in society, there can be differences in interests between each individual. The difference in interests can result in conflict among individuals (members of society). To resolve conflicts among individuals, the law is needed. One of the functions (uses) of law is as a means of dispute resolution, so as to create order and tranquility for citizens (Mardiah, 2011). The development of alternative conflict/dispute resolution as an out-of-court dispute resolution strategy has recently been quite rapid. Resolve provides a definition of the basic processes of alternative dispute resolution that can benefit efforts to systematize experiences so far regarding the handling of dispute cases that have been carried out. Some of them are conciliation, facilitation, negotiation and mediation, arbitration, but on this occasion they only describe the meaning of mediation.

Based on the prevailing laws and regulations, in general, several legal principles can be stated as a basis for dispute resolution through mediation: the principle of representation, the principle of deliberation, the principle of consensus, the principle of decency, the principle of being closed, the principle of being open to the public, the principle of active mediation, the principle of free choice, the principle of accuracy, the principle of legal certainty.

In industrial relations, the elements involved in it are required to be able to carry out their roles and functions properly, so that harmonious relations will be created among the actors which in turn will stimulate economic development, create business peace and work peace and can encourage productivity and worker welfare (Soekanto, 2007), besides that, the creation of good industrial relations will prevent the occurrence of crimes and losses for companies (crime and loss prevention).

The mediation process is very dependent on the play played by the parties involved in the settlement of the dispute, in which the parties directly involved are the mediator and the disputants themselves. Mediators as negotiators must have skills in managing conflict, solving problems creatively through the power of communication and analysis (Sutedi, 2012). The existence of a mediator as a third party really depends on the trust given by the parties to resolve their disputes. This belief is born because the parties think that someone is considered capable of solving the problems they are facing. Trust like this is an important factor for the mediator as an initial capital in carrying out the mediation process. However, relying solely on the trust of the parties does not guarantee that the mediator is able to produce agreements that satisfy the parties. Therefore, the mediator must have a number of requirements and expertise that will help him carry out the mediation process.

As for the requirements to become a mediator as in Article 9 of Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes are:

- a. Have faith and devotion to God Almighty;
- b. Indonesian citizens;
- c. Be in good health according to a doctor's certificate;
- d. Mastering laws and regulations in the field of manpower;
- e. Be dignified, honest, fair, and behave without blemish;
- f. Have at least Bachelor degree (S-1); and
- g. Other conditions stipulated by the Minister.

The mediation mechanism is that the mediator will not interfere in producing a decision, therefore it can be assumed that the decision produced through mediation will provide a satisfactory solution by considering the opinions and input of the parties about the problem so that as a neutral third party it has a role to help. or facilitate the mediation process.

Within no later than 7 (seven) working days after receiving the delegation of dispute settlement, the mediator must have conducted an investigation into the seat of the case and immediately hold a mediation session. Where in the mediation process, the mediator has a role as a mediator, and to carry out that role, a mediator must carry out his duties, namely actively assisting the parties in providing a correct understanding of the dispute at hand and providing the best alternative resolution but the agreement is determined by themselves by the parties.

Each party is given the opportunity to present or explain to each other the issues that are the subject of their dispute to the mediator in turn. Where the purpose of this

presentation is to provide information to the mediator and provide an opportunity for the parties to listen to each other's problems and desires. And one of the important roles of a mediator here is to identify problems/things that have been mutually agreed upon between the parties. This will help the parties see the positive aspects of the problems that occur. The mediator cannot impose his ideas as dispute resolution which must be obeyed.

In the event that an agreement is reached through mediation, a Collective Agreement (PB) is made which is then signed by the parties and witnessed by the mediator and then the mediator is obliged to register the Collective Agreement with the Industrial Relations Court at the District Court in the jurisdiction of the parties to enter into a Collective Agreement. However, in the event that no agreement is reached through mediation, the mediator will issue a written recommendation no later than 10 (ten) working days since the first mediation session was held with the parties. The party who does not give his opinion is considered to reject the written recommendation, on the contrary, if the parties agree to the written recommendation from the mediator, this is where the mediator must play an active role to help the parties complete the making of a Collective Agreement which is then registered with the Industrial Relations Court at the District Court in the jurisdiction of the parties. enter into a joint agreement.

Suppose the written recommendation is rejected by one of the parties or the parties. In that case, the parties or parties can continue the dispute settlement to the Industrial Relations Court at the local District Court. Based on the prevailing laws and regulations, in general, several legal principles can be explored as the basis for dispute resolution through mediation, which is the principle of active mediation. The purpose of this principle is that after the mediator is appointed, the mediator's first step is to determine a meeting schedule for the completion of the mediation process. The mediator is then obliged to encourage the parties to explore and explore the interests of those in dispute and look for various settlement options that are best for the parties. Besides, the mediator, with the parties' agreement, may invite one or more expert witnesses in a particular field to explain the considerations that can assist the parties in settling differences. However, it must be remembered that the mediator's freedom here is only based on the disputing parties' agreement, meaning that the mediator only gives encouragement and advice to the parties. Thus the mediator cannot force his will in resolving the dispute, let alone side with one of the parties (Perdana, 2008). From the principle of active mediation, it can be seen that the roles of a mediator in dispute resolution, namely to facilitate the mediation process and bridge the interests of the parties.

A mediator must also have insight and affection for broad principles of fairness, equality, and a willingness to be instilled in negotiating exchanges between the parties. Besides, in carrying out their duties, a mediator can also act as:

- a. Catalyst, which is to encourage a conducive dispute resolution between the disputing parties.
- b. Educators, namely a mediator must understand the will, desires, and aspirations of all parties to a dispute.

- c. The resource person, as a resource person, the mediator functions as a place for the parties to ask questions about the disputes they face and also as a party to provide advice and a source of information needed by the parties.
- d. Conveyor of messages, the mediator also acts as a messenger of messages from the parties to be communicated to the other party, therefore a mediator must also be able to open lines of communication with the disputing parties.
- e. Leaders and mediators must also be able to take the initiative to encourage that the negotiation process can run procedurally according to the time frame that has been designed.

There are several things that must be considered in mediation, such as the basic principles in conducting mediation. The statutory regulations define several principles of mediation (Hirdayanti dan Diansyah, 2017) are:

- a. Confidentiality is that everything that occurs in a meeting organized by the mediator and decided (the conflicting parties) is confidential. The principle of confidentiality can be seen in Supreme Court Regulation No. 1 of 2008 Chapter 1 paragraph (12), namely the closed mediation process is that mediation meetings are only attended by the parties or their attorneys and the mediator or other parties permitted by the parties and the dynamics that occur in the meeting may not be conveyed to the public unless with the permission of the parties.
- b. Volunter. Each of the conflicting parties came to mediation on their own willingly and voluntarily. There was no coercion or pressure from other parties or outside parties. This voluntary principle is built because people will be willing to work together to find a way out of their dispute. This happens when they come to the negotiating place of their own accord.
- c. Empowerment of Parties. In the mediation process, the disputing parties are encouraged to find their own best solutions to their problems as much as possible. Supreme Court Regulation No. 1 of 2008 Article 15 paragraph (4) explains that the mediator is obliged to encourage the parties to explore and explore their interests and seek the best resolution options for the disputing parties.
- d. Impartiality. Supreme Court Regulation No. 1 of 2008 Article 1 paragraph (6) explains that the mediator is a neutral party who helps the parties in the negotiation process find various solutions or possibilities. Dispute resolution without using a way to decide or force a settlement. This means that a mediator as a third party who designs and leads the mediation process must be neutral and impartial.
- e. A unique solution. The solution produced from the mediation process does not have to comply with legal standards but can be generated from a creative process. Therefore, the mediation results may follow the wishes of the two parties, which is closely related to the concepts of empowerment of each party (Muslih, 2007).

These roles must be well known by someone who will be the mediator in a dispute resolution. The mediator must use his/her abilities to the maximum to give the best so that the disputing parties are satisfied with the decisions they have made and agree to the

mediator's assistance. To display its role optimally, at the preliminary stage of the mediation session, the mediator first explains the mediation process and the role of a mediator even though one or both parties may already know how mediation works and the role of a mediator. However, it would be beneficial if the mediator explained the matter in front of the parties in the mediation process. This explanation relates primarily to the mediator's identity and experience, the neutrality of the mediator, the mediation process, the implementation mechanism, its confidentiality, and the results of the mediation process. If the parties fully understand the mediation's working mechanism, it will be easier for the mediator to perform its role optimally (Abbas, 2009). Therefore, in addition to mediation being determined by the ability of the mediator, its success is very much determined by the parties so that the parties not only understand the substance they are at issue with, they are also expected to understand mediation as the ultimate remedial settlement because deliberation to reach consensus is the main way to settle industrial relations.

### **The Power of Mediator Suggestions in Resolving Disputes in Pancasila Industrial relations**

The settlement of industrial relations disputes through non-litigation channels is expected to reduce disputes submitted to the Industrial Relations Court. Therefore peaceful dispute resolution must be pursued optimally by intermediary employees (mediators) by offering various alternative solutions. The Office of Social Affairs and Manpower, as one of the government agencies whose function is to organize a better community life, especially in the workforce sector, has an important role in resolving industrial relations disputes. This is because the settlement of industrial relations disputes through mediation is carried out by a mediator in each district / municipal workforce offices responsible for workforce affairs. In this case, the Office of Social Affairs and Manpower has the authority to provide a mediator, as a neutral third party to help resolve industrial relations disputes between employers and workers/laborers. Mediation is a form of dispute resolution outside the court, which is included in the category facilitative process.

The mediator needs to create a structure in the mediation meeting that covers issues that are in dispute and are developing. Then hold negotiations to reach a decision, which is the result of negotiations from the parties. The mediator's suggestion is given if after hearing his opinion. It is taken if negotiations through the two parties' negotiation before the mediator does not reach a result or agreement. Basically, the mediation decision is determined by the disputing parties, and the mediator is more to assist the parties in solving problems previously identified.

When viewed from Article 14 to Article 16 of the Decree of the Minister of Manpower and Transmigration Number: KEP-92/MEN/2004, the working procedures for mediation in resolving disputes are:

- a. After receiving the delegation of dispute files, the mediator must:



1. Checking the dispute files;
2. Conducting a mediation session, no later than 7 (seven) working days after receiving the delegation of tasks to resolve the dispute;
3. Summons the parties in writing to attend the trial by considering the time of summons so that the mediation session can be held not later than 7 (seven) working days after receiving the delegation of tasks to resolve the dispute;
4. Conducting mediation sessions by endeavoring to resolve them by deliberation to reach a consensus;
5. Issue written recommendations to the parties if the settlement does not reach an agreement within no later than 10 (ten) working days from the first mediation session;
6. Helping to make a written collective agreement if a settlement agreement is reached, which is signed by the parties and witnessed by the mediator;
  - b. Notifying the parties to register a collective agreement that has been signed by the parties to the Industrial Relations Court at the District Court where the collective agreement was signed to obtain a proof of registration deed;
- b. Prepare minutes on every industrial relation dispute settlement.
- c. In the event that one of the parties or the parties uses the services of a legal attorney in a mediation hearing, the party using the legal counsel must still be present.
- d. If the parties have been summoned by considering the settlement time, it turns out that the applicant is not present, then the petition is deleted from the disputed book.
- e. If the parties have been summoned by considering the settlement time, it turns out that the respondent is not present, the mediator will issue a written recommendation based on the available data.
- f. If the parties do not answer the recommendation in writing, then the parties are deemed to reject the recommendation, the mediator records in the dispute booklet that the dispute cannot be resolved through mediation and reports to the official who gave the assignment.
- g. In the event that the parties agree to the recommendation and state it in writing, the mediator helps to make a written collective agreement no later than 3 (three) working days after the recommendation is approved by the parties which are then signed by the parties and the mediator as a witness. The mediator's written recommendations include:
  1. Worker's statement or trade union statement;
  2. Statement of entrepreneur;
  3. Statement of witnesses and expert witnesses, if any;
  4. Legal considerations and the mediator's conclusions;
  5. The recommendations.
- h. If the mediator issues a recommendation taking into account the statements that must be kept confidential according to the request of the information provider, then in the

recommendation the mediator is sufficient to state the conclusion based on information that must be kept confidential in his consideration.

The mediator's time to complete his/her duties is no later than 30 (thirty) working days from the time the mediator receives the delegation of dispute settlement. Suppose an agreement is reached for the settlement of industrial relations disputes through mediation. In that case, a collective agreement is signed by the parties and witnessed by the mediator. It is registered at the Industrial Relations Court at the District Court in the parties' jurisdiction that has a collective agreement to obtain a proof of registration deed. Likewise, if the parties have agreed to the written recommendation issued by the mediator, then within a maximum period of 3 (three) working days, the mediator must have finished helping the parties make a collective agreement and then register it with the Industrial Relations Court at the District Court in the jurisdiction of the parties. The parties entered into a joint agreement to get a proof of registration deed.

Collective agreements that have been registered are given proof of registration deed and integral to the collective agreement. If the collective agreement is not carried out by one of the parties, then the injured party can submit a request for execution to the Industrial Relations Court at the District Court in the area of the joint agreement to be registered to get an order of execution.

If the settlement of industrial relations disputes through mediation is not achieved, the mediator will issue a written recommendation. The written recommendation no later than 10 (ten) working days from the first mediation session must have been submitted to the parties. The parties must have provided a written answer to the mediator, stating that they agree or reject the written recommendation within no later than 10 (ten) working days after receiving the written recommendation. A party that does not provide an opinion is deemed to reject the written recommendation. If the written recommendation is rejected by one of the parties or the parties, then the parties or one of the parties can continue the dispute settlement to the Industrial Relations Court at the local District Court by filing a lawsuit.

From the stages of the mediation process which is implicitly the function of a mediator, the role of the mediator briefly includes:

- a. Controlling processes and defining ground rules;
- b. Maintain structure and momentum in negotiations;
- c. Fostering and maintaining trust among the parties;
- d. Describe the process and educate the parties on good communication;
- e. Strengthens the atmosphere of communication;
- f. Helping the parties to deal with situations and reality;
- g. Facilitating creative problem solving among the parties;
- h. End the process when it is no longer productive.

The mediator can also function and act as an assistant or helper. It is emphasized that the mediator is a neutral and impartial third party whose function is to help the

parties find various possible solutions. In connection with the mediator's function and role, the mediator is obliged to encourage the parties to find the best alternative by exploring the interests of the parties through the recommended options and must act as a capable assistant. If these functions and roles can be carried out by the mediator with humility and keep arrogance away, the mediator can likely lead the parties to the gates of peace based on the concept of a win-win solution (Abbas, 2009).

The mediator, as a neutral third party, serves the interests of the disputing parties. These actions are significant for the mediator to maintain the mediation process. Gary Goodpaster (1993) argues that mediation is a process of negotiating problem-solving. An impartial and neutral outsider works with the disputing parties to help obtain a satisfactory agreement. Unlike the judge and arbitrator, the mediator does not have the authority to decide between the parties. Still, the parties are empowered to the mediator to help them resolve the problems between them.

In chairing the meeting, which both parties attended, the mediator plays a role in assisting, directing, and helping the parties open positive two-way communication because it will facilitate the subsequent mediation process through well-developed communication. In this role, the mediator must use polite, gentle language and do not offend the parties. The mediator can use positive two-way communication parties to bridge or create mutual understanding between the parties. Such a role is performed by the mediator in creating the mediation process. This means that mediation must be carried out seriously to achieve peace because it can carry out the mediation before the case is further examined. Mediation is an attempt by the parties in dispute to make peace in the interests of the parties themselves, not the interests of the judge or court, or even the mediator. The parties in the case bear all costs incurred due to the mediation process. Considering that the mediator's role greatly determines the effectiveness of the process in resolving industrial relations disputes, a mediator must have certain requirements and qualifications.

The mediator's qualification can be seen from 2 (two) sides, namely from the external side of the mediator and from the internal side of the mediator. The mediator's external side relates to the formal requirements that a mediator must have about the resolution of the dispute being handled. Meanwhile, the internal side is matters related to the mediator's personal ability in carrying out his duties and roles as a good mediator to determine the success or failure of a mediation process that is being handled. What is meant by the personal ability in resolving industrial relations disputes is in the form of abilities or expertise that a mediator has personally owned. In bridging meetings with the parties, conducting negotiations, maintaining and controlling the negotiation process, and offering dispute resolution options even to the dispute settlement agreement formulation process, the mediator must be able to carry out these tasks properly by using certain skills. It has. For example, a mediator must have the ability to build the parties' trust, where the trust given by the parties is the initial capital for the mediator in carrying out mediation activities.

When viewed from the role and activities of the mediator, a mediator in terms of benefits is a type of negotiation "therapist". This therapist analyzes and diagnoses a particular dispute, and then designs and controls other processes and interventions with the aim of guiding the parties to a healthy consensus. In this regard, the important roles of the mediator are:

7. Perform a conflict diagnosis.
8. Identification of problems and critical interests of the parties.
9. Develop an agenda.
10. Streamlining and controlling communication.
11. Teach parties in bargaining processes and skills.
12. Help the parties gather important information.
13. Problem solving to create choices.
14. Dispute diagnosis to facilitate problem solving.

Howard Raiffa (1982) sees the role of the mediator as a line ranging from the weakest side to the strongest role. The weakest side of the role if the mediator only carries out the roles as:

1. Meeting organizers.
  2. Neutral discussion leader.
  3. Maintain or guard the negotiating rules so that debates in the negotiation process take place in a civilized manner.
  4. Control the emotions of the parties.
  5. Encourage parties or negotiators who are less able or reluctant to express their views.
- Cited from Suyud Margono, the side of the role is strongest when the mediator acts or does the following in the negotiation process:

1. Prepare and make minutes of negotiations.
2. Formulate or articulate a common ground or agreement between the parties.
3. Help the parties realize that a dispute is not a fight to be won, but to be resolved.
4. Compile and propose various problem solving options.
5. Helping the parties to analyze the various options for solving the problem

If you pay attention to the description above, the role of the mediator in resolving a dispute is very heavy and therefore not everyone can become a mediator. According to Brazil (2007), the heavy duty of this mediator is because:

“In some mediations there is no occasion for evaluative input by the mediator, and in some instances when the neutral offers some input on the merits, she does so obliquely (e.g., through questions), or with very substantial qualifiers, or only on some limited part of the case. Often, the evaluative feedback is given in private caucuses. In one form or another, however, there probably is some element of evaluation in a substantial percentage of our mediations”.

When the mediator provides inputs (suggestions) in the mediation process, no party evaluates the mediator's input, so it is feared that the mediator's input may deviate. For this reason, a mediator must be able to find the source of the conflict, which is the base of the dispute between the parties. Then, based on the conflict source, the mediator will

formulate and suggest options for solving the problem. Not only that, but the mediator must also be able to create a conducive and familial atmosphere so that the parties freely and openly express their opinions and views. By knowing the parties' opinions and views, it will be easier for the mediator to understand the desires of the parties and by itself will also make it easier for the mediator to suggest various problem-solving options. However, it must be remembered that the mediator can only be done if the negotiation process shows signs of "impasse," and for this, it must be disbursed first. This is where the mediator's role is needed to break the deadlock by putting forward proposals that can satisfy all parties. The resulting problem solving is the final agreement of the parties, not the mediator's decision.

The judge holds the highest power in the trial. Meanwhile, in the mediation process, the highest authority rests with the respective parties in dispute. As a neutral third party, the mediator is only tasked with assisting or facilitating the mediation process. The result of the trial process is the judge's decision. Meanwhile, the mediation process resulted in an agreement obtained from each party. The agreement of these parties has a strong character compared to the court decision. This is because the agreement is a collective agreement obtained from deliberation to reach a consensus by the parties. This means that the agreement is the result of compromise or the path they have chosen to agree on in their interests. Meanwhile, if in the court decision, other parties also decide, namely the judge. In other words, the court's decision is not the result of an agreement between the parties, so some parties win, and there are losers.

In the mediation process, various dilemmas or obstacles will be encountered in its implementation. Likewise, in the Social and Manpower Office, in resolving industrial relations disputes through mediation, mediators often encounter various obstacles. The obstacles experienced by the mediator at the Office of Social Affairs and Manpower include: the difficulty of uniting the interests of both parties; and the abilities of each mediator are different. In resolving the problems experienced by the mediator in resolving industrial relations disputes at the Social and Labor Service, the mediator has tried several forms of resolution, including by: increase the trust of the parties in the mediator; and improve the ability and expertise of the mediator in settling industrial relations disputes.

From the description above, written advice is not a formal requirement to file a lawsuit at the Industrial Relations Court. At the same time, the minutes of mediation or conciliation settlement are formal requirements. So a written recommendation has no legal force to be implemented by both parties. A written recommendation will have legal force if made as part of the minutes of the settlement of industrial relations disputes. This is based on the provisions of Article 83 paragraph (1) of the PPHI Law; if the lawsuit is not accompanied by minutes of settlement through mediation or conciliation, the Industrial Relations Court Judge is obliged to return the lawsuit to the plaintiff. Moreover, the settlement of industrial relations cases must first be through mediation or conciliation because this provision is imperative (mandatory). Thus, the plaintiff must obtain evidence in the form of minutes of mediation settlement or minutes of conciliation settlement

before submitting a lawsuit to the Industrial Relations Court. Therefore, the phrase "written recommendation" in Article 13 paragraph (2) letter a of the PPHI Law is contrary to the 1945 Constitution, as long as it is not interpreted as "if an agreement is not reached for the settlement of industrial relations disputes through mediation, the mediator issues a written recommendation in the form of a settlement treatise through mediation." Likewise, Article 23 paragraph (2) letter a of the PPHI Law, contradicts the 1945 Constitution, as long as it is not interpreted as "if no agreement is reached on the settlement of industrial relations disputes through conciliation, the conciliator will issue a written recommendation in the form of minutes of settlement through conciliation.

## Conclusion

Mediation is one of the mechanisms for settling industrial relations disputes according to Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes, as one of the non-litigation settlements besides Conciliation and Arbitration. Payment of Mediation is carried out as a follow-up to failed Bipartite negotiations. The mediator in mediation becomes a point of contact that plays an active role in settlements outside the court.

The recommendations issued by the industrial relations mediator in mediating dispute resolution have been ineffective. They do not have their strength because written submissions are made collectively in the form of minutes of settlement through mediation. The mediator's written recommendation is issued as long as it is not interpreted if an agreement is not reached for the payment of industrial relations disputes through mediation. At the same time, the submission of a lawsuit to the Industrial Relations Court is not based on the absence of a written recommendation but rather on the minutes of industrial relations dispute resolution which includes a written offer. A written submission does not have the power as a formal requirement in a lawsuit to the Industrial Relations Court; a written recommendation is part of the minutes of a settlement of industrial relations disputes. A written submission only has power if a collective agreement is made and registered with PHI to get the ability to be implemented

## Suggestion

The disputing parties should prioritize industrial relations dispute settlement through non-litigation channels rather than litigation channels. In addition to avoiding the piling up of cases at PHI, the costs incurred are lower, can save energy and time, and do not cause a wrong impression to either party because the decisions reached are win-win solutions. To increase its role, a mediator should attend education or training in the workforce sector, notably by expanding its personal ability to resolve industrial relations disputes. The mediator should also share more ideas and share experiences with a more senior mediator who has more experience in resolving a conflict. Thus, the mediator can carry out his role optimally.

Written recommendations do not have strong legal force without being made as a collective agreement and registered with the PHI to have the parties in dispute should accept regular power issued by the industrial relations mediator because the industrial relations mediator understands labor law issues so that the conflicts that occur do not have an impact more broadly related to the sustainability of relations between workers and employers.

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