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Political Perspective of Law on Empowerment of Arbitration as Institution for Settlement of Industrial Relation Disputes

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Abstract

The purpose of this dissertation is to investigate and analyze: (1) why industrial relations court is chosen in the settlement of industrial disputes rather than arbitration, (2) what the significance or role the arbitration can do in the settlement of industrial relation disputes that it should be empowered, (3) how does the form of empowerment and arbitration model of industrial disputes that is expected. The research was done by doctrinal methodology that examines the law that is conceived and developed on the basis of the doctrine adopted by researchers and non-doctrinal research that examines laws that live and thrive and prevail in society. To support these two approaches, the researcher used several theories, including the theory of justice, dispute resolution theory, the theory of empowerment, and politic of law theory. The results shown that (1) the court of industrial relations (PHI) is still the main choice simply because of its pragmatic reason since there are no court fees and costs of execution until the lawsuit reaches the value of Rp.150 million, the lack of socialization on arbitration (internalization) that made it unknown, especially to workers, and consideration that cost of arbitration is expensive; (2) the significance and the role that can be carried out by arbitration: the public have lost confidence toward the court, including PHI *(distrust),* which needs to be canalized through arbitration, as a professional institution, having high competence, legal certainty, with its decision being final and binding that can be directly executed, where the relationship of the disputants remain good as the investigation is closed, and reducing the number of cases piling up in the Supreme Court; (3) the form of empowerment: to change the paradigm of society that does not always think only through PHI, justice and legal certainty can be obtained *(justice in many rooms),* comparing arbitration in various countries, improvement of various regulations by proposing amendments so that the competence upon disputes can be resolved through arbitration equally as the competence of PHI. Arbitration model for industrial relation disputes puts deliberation for consensus and is referred to as the Arbitration of Five Pilars (Pancasila), in every stage of examination; it should be started with deliberation for consensus, and peace. Amendment and replacement of laws governing the settlement of disputes by UUPPHI a legal perspective that needs promptly to be done under *political will* support from government, legislator and stakeholders. To create regulation on dispute resolution with mainstream being focused on fairness, benefit and legal would certainty be realized through the institution of arbitration?

Keywords: Industrial Relations Court, Empowerment of Arbitration, Political Perspective of Law, Arbitration Model

A. Introduction

Disputes[1] in labor relation[1] is a necessity as in any moment a violation over right and obligation of any parties

[1] The term "disagreement" is used in Law No. 13 of 2003 on Manpower (Labor Law) and Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement (UUPPHI). In English language the terms dispute, case, contradiction are stated with the term *conflict* or *dispute.* Henry Campbell Black, 1979: 424 *Dispute a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side. The subject of litigation; the matter for roommates a suit brought and upon which issue is joined, and in relation to which, jurors are called and Witnesses Examined.* Dispute or disagreement, debate; Disputes to demand rights; a claim for a right, suit, or claim of demand on one side. As the subject of court proceedings; cases which will be sued and that is where the problems are interconnected and interrelated jury and

who have engaged in working relation, may occur. Working relations made in employment agreement are very prone to disputes. Even the object of the dispute concerned is the employment agreement itself. Employment agreement contains the type, the place, the wage and payment method of the work, the commencement of work and the term of the agreement. In the system of production process, the parties involved are entrepreneurs, workers/laborers[2] that is called industrial relations, "a system of relations formed between the actors in the process of production of goods and/or services which consist of representatives from employers, workers/labor and government based on the values of Pancasila and the 1945 Constitution[3] of the Republic of Indonesia. The employer as job provider, the worker as executor/ receiver of the work and the government as the maker of regulation (regulator).

The relation of these three elements (*tri-partite*) must always be maintained, the parties understand their duties and responsibilities to support the production process and the optimum performance. The requirement for increase of work production[4] is a kept maintained dynamic and conducive working relation supported by harmonious communication between employee and employer. Thus, the disagreement that led to a dispute can be avoided and even can be solved at that particular moment. Disruption of the harmonious relation usually occurs when discussing wages, working facilities, bonuses and others.

The dispute concerned is referred to as the Industrial Relation Dispute[5], namely the "differences of opinion that led to conflict between employer or combined employers and the worker/laborer or trade unions/labor unions due to dispute relating to right, conflict of interest and disputes over termination of employment as well as disputes among unions/labor unions only in one company"[6]. The emerge of this dispute is closely connected with economic inequality, education, experience between employer and worker. If disputes are often cannot be resolved amicably through consultation/ consensus[7] as the parties likely to hold on their own opinion and position despite their unequal position[8]. Position of worker under the position of employer or worker

examine witnesses. Discord, disagreement, debate, conflict and other designations indicating that differences can all be classified into a dispute (in this paper the term will be used interchangeably in accordance with the context of this discussion)

[1] According to Article 1, point 15 of Labor Law, Working relation is the relationship between employer and worker/laborer based on employment agreement, which has the elements of employment, wages and instruction. Whereas, according to Article 50 of Labor Law, Working Relation occurs due to employment agreement between employer and worker/laborer. Definition of Working Relation also does not expressly formulated in Book III of Title 7A Civil Code but it can be interpreted that working relation is born from types of agreements to engage working (in its broadest sense) and a working relation that is born just from a working agreement (in narrow sense). Of the three understanding of the working relation, the key word of Working Relation is the Working Agreement. The element "instruction" of a working agreement *(ver houding gezag)* in the working relation, the position of employer is as the job provider that made him entitled and also obliged to give instructions related to the job. The position of worker is as the party who receives instruction to carry out the work. The relation between the worker and the employer is the relation conducted between superior and subordinate that it has the nature of *subordination* (a vertical relationship, that is up and down), see: Asri Wijayanti, *Menggugat Hubunan Kerja* (*To Claim Employment),* Lubuk Court, Bandung, 2011, p. 55-56

[2] In Article 1 point 3 of Labor Law, the term worker and laborer are not differentiated, that is any person who works by receiving wages or compensation in other form. In further terminology writing, the Researcher uses the term worker but in term of definition, remain quoting in full sense.

[3] See Article 1 point 16 of Labor Law.

[4] Productivity is a scale on how well we convert input from transformation process into output or input compare to output equal to productivity (read: Heri Prasetya, *Manajemen Operasi* (Operational Management) MED Press, Yogyakarta, 2009, p. 80)

[5] Hereinafter the term Industrial Relation Dispute in this study uses the short term "dispute".

[6] See Article 1 point 22 of Labor Law.

[7] In fact, the industrial relation is supposedly based on values of Pancasila and the 1945 Constitution of the Republic of Indonesia, which mean that Pancasila as the philosophy of the nation of Indonesia which has noble values of Indonesia, must be applied in various fields, including law. The values of Pancasila are essentially the view of life, consciousness and ideals of law and moral ideals sublime that includes psychological air, as well as the character of the Indonesian nation that on August 18, 1945 has been purified and compressed by the Preparatory Committee for Indonesian Independence (PPKI) into the basic state of the Republic of Indonesia. In this sense, the spiritual values which belong to Pancasila recognize the material and vital values contained therein other values in complete and harmonious fashion, either material, vital, truthfulness (reality), and aesthetic, ethical and religious. This is evident from the precepts of the first principle of Pancasila until the fifth precepts that are arranged in a systematic, hierarchical and whole round, see: Darji Darmodiharjo and Shidarta, Pokok-pokok Filsafat Hukum (*Principles of Philosophy of Law),* PT. Gramedia Pustaka Utama, Jakarta, 1995, p. 210-214

[8] Position of the parties, namely the employer and the worker/laborer shall be considered in equal position since the agreement that is made legally binding on both parties as the law (Article 1338 Civil Code). The parties must implement

is *subordination*[1] of employer. Worker as the party who receives carries out the work made by the employer must be carried out properly since the employer assesses the performance of worker. That is one proof that the worker is under the instruction[2] of employer.

Settlement of dispute is done in stages, begin with direct negotiation (consultation)[3] between worker and employer. The term consultation in Indonesian Constitutional and modern life, known as *syuro*, *rembug desa* (village consultation), kerapatan nagari (villages deliberation) and even democracy[4] (people who rule). Obligation of consultation is a joint effort based on mind or healthy rational and considers at all time the unity of the nation, interest of the people, carried out with conscious, honest and responsible and encouraged by goodwill in accordance with conscience[5]. Settlement of disputes through consultation is called as bi-partite negotiation as set out Law Number 22 of 1957 on the Settlement of Labor Disputes (UUPPP). When the bipartite negotiation is successful then an agreement shall be made in the form of labor agreement. If not successfully resolved by the Regional Level Committee for Settlement of Labor Disputes (P4D)[6] and if one of the parties does not accept the decision of P4D, he/she may submit an appeal through the Dispute Settlement Committee at the central level (P4P). If the parties are not unsuccessful through P4D, they may resort to arbitration. The arbitration[7] shall resolve the dispute out of court. The submission to arbitration is expressed by a documentary agreement between among the parties, consisting of[8]: a. issues of concern that become the dispute to be submitted to arbitrator or arbitral tribunal for settlement; b. names of officials or representatives of trade unions and employers as well as their domicile; c. who is appointed as arbitrator/arbitral tribunal and their place of domicile; d. that both parties will be subject to the award that will be taken by the arbitrator or arbitral tribunal after the same becomes final and binding; e. any matters that need to be expedited the settlement.

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what they have agreed upon so that the agreement is valid as the law. That means both sides are obliged to abide by and implement the agreement. The principle of this binding power relates to implication of the agreement and is known as *pacta sunt servanda.* It is supposedly that something that have been agreed by both parties must also be adhered to by both them. Where does the legal certainty suppose to if two people who have made an agreement may at any time deny the deal? see: Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (*Knowing the Law, An Introduction),* Liberty, Yogyakarta, 1999, p. 112; also the Law of Agreement Workshop, organized by the National Agency for Law Development of the Department of Justice, dated 17-19 December 1985, which successfully formulated eight national engagement legal principles: the principles of trust, equality, balance, legal certainty, moral, decency, custom and protection. In particular the principle of equality is meant that subject of law who enters into an agreement has the same legal status, right and obligation under the law. They are not differentiated on to another despite of differences in skin color, religion and race of the legal subject, see: Salim HS, *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak* (*Contract Law Theory and Techniques of Contract Drafting),* Graphic Rays, 2004, p. 13

[1] Researcher is of the opinion that position of worker is lower than employer since the worker serves as the party who receives job from the employer as job provider, so the worker must be abide by job instruction given by the employer.

[2] In a working relation based on cooperation agreement there are three elements namely: jobs, wages and instruction. The job is meant as the type of work that can be performed by worker (remember the objective requirement on validity of agreement of Article 1320 Civil Code namely the existence of a specific job and the job is legit); wages are meant as a decent wage based on the government's decision and instruction is meant as who assign what to who or who order the work to be done by a worker must be clear (read: Article 1 point 15 of Labor Law)

[3] The consultation is meant here as consultation referred to in Article 3 UUPPHI, i.e., bi-partite negotiation to deliberately reach consensus. While bi-partite negotiation according to elucidation of this article is combination of negotiation between employer or employer and worker or union/labor union or between trade union/labor union and union/other union in one company to the dispute. It means that bi-partite negotiation has not involved third party but only the disputing parties who are negotiating.

[4] Darji Darmodiharjo, *Pancasila Suatu Orientasi Singkat (Pancasila, A Brief Orientation)*, Aries Lima, Jakarta, 1984, p. 59

[5] Ibid

[6] Established based on Law No. 22 of 1957 regarding Settlement of Labor Dispute (UPPP), in regional level is called P4D and in central level, P4P.

[7] Systemized from Article 19-22 UUPPP

[8] Almost the same to the arbitration agreement under Article 32 paragraph (3) UUPPHI: a. full name and address or domicile of the disputing parties; b. the issues that become the dispute and be brought to arbitration for settlement and to take decision; c. number of the agreed arbitrators; d. statement of the disputing parties to submit and execute award of arbitration; e. place, date of the enter into of agreement and signature of the parties to the dispute; compare with arbitration agreement according to Law No. 30 of 1999 Article 9 paragraph (3), which consists of: a. problems in dispute; b. full name and residence of the parties; c. full name and residence of arbitrator or arbitral tribunal; d. arbitrator place or arbitral tribunal will take the award; e. full name of secretary; f. period of dispute resolution; g. willingness of the arbitrators; h. willingness of the parties to bear all expenses required for the settlement of disputes through arbitration.

To deal with the age of development, labor regulations are also changing. The current legislation that concerns with settlement of industrial relation disputes is the Law No. 2 of 2004 regarding Settlement of Industrial Relation Dispute (UUPPHI). This law stipulates the settlement of disputes through litigation and non-litigation. Settlement of disputes by non-litigation is done through negotiation, conciliation, mediation and arbitration. Stipulation of arbitration as a dispute resolution institution out of court has been comprehensively stipulated from Articles 29 to 54 of UUPPHI. The settlement process through the four mechanisms as mentioned above must be preceded by bi-partite negotiation consultations to reach consensus. Settlement of dispute by litigation may examine and adjudicate 4 types of dispute: (i) Dispute concerning right; (ii) Dispute concerning interest; (iii) Dispute on termination of employment, and (iv) Disputes between union/labor union within one company. The settlement mechanism of the four disputed concerned is carried out in stages and through different institutions, but all stages of settlement must be preceded by bi-partite negotiation consultations to reach consensus. The Industrial Relations Court (PHI) gets euphoric reaction from workers and employers, although they have not yet understand the form, the dispute that can be adjudicate, or procedure of proceedings in the court. The joy over the welcoming of PHI has made the socialization (internalization) upon settlement of disputes in non-litigation is forgotten causing the mechanisms concerned does not become the choice of the disputing parties.

In its way, the arbitration of industrial relation has not yet become the choice of the parties to resolve the dispute they are facing. This is due in addition to the lack of internalization, the workers also assume that arbitration is expensive and they don't understand how it works. The existence of arbitration is not to negate PHI but empowers the institution as an alternative dispute resolution besides conciliation and mediation. Thus the option/choice of the workers and employers are increasingly varied. Satjipto Rahardjo[1] indicates the shifting of law enforcement process by finding other way to achieve the purpose of law as it is called the sociological patterns such as *Alternative Disputes Resolution* (ADR). The emergence of ADR as a creative product handles legal matters in order to achieve common goal. It becomes the question on how arbitration be the main option for employers and workers to resolve their dispute, the politic of law also plays an important role. The politic of law is connected with power and authority, which therefore the duty shall be to utilize the power and authority to achieve the goal[2] i.e., to empower arbitration as the main option to resolve dispute. This is becoming the trigger and driven the Researcher to empower and at the same time develop (search) for arbitration model of industrial relations suitable to resolve disputes.

The arbitration Model the researcher offered is the Pancasila Arbitration that promotes consensus, peace so that relationship of workers with employers are well maintained at all times, no hostility exist. At every stage of the Pancasila Arbitration it is possible for deliberation and examination through arbitration proceedings as the last step. Based on the said matters the researcher conducts research and is prepared in a dissertation under the title, Political Law Perspective on Empowerment of Arbitration as Institution for Settlement of Industrial Relation Dispute, with the following formulation of issues:

1. Why the Industrial Relations Court is more preferred by the disputing parties in the settlement of industrial relation disputes than arbitration?
2. What is the significance and role the arbitration can do in the settlement of industrial relation disputes that it needs to be empowered?
3. How does the ideal form of empowerment and arbitration models for industrial relation disputes in

[1] Satjipto Rahardjo'concern is described that the shifting of law enforcement to the "slow lane" has not been unreasonable. He had seen that law enforcement concerns with human behavior (apparatus and public) so there is needs of options on what should be done (Read: Satjipto Rahardjo, *Penegakan Hukum Jalur Lambat, Sisi-sisi Lain dari Hukum di Indonesia* (*Law Enforcement in Slow Lane, Another Sides of Law In Indonesia,* Kompas, Jakarta, 2006, pp. 165-166)

[2] Talcott Parsons places the law as one of the sub-systems apart from the sub-system of culture, politics and economics. Cultural relates to values being considered as noble, so it needs to be maintained. The sub-system of law refers to regulations as rule of the game, controlling to avoid deviations to comply with the rules. The sub-system of politic connects with power and authority, that is the utilization of power and authority to achieve the goal (read: Tanya L. Bernard, et al, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi* (*Strategic Law Theory of Human Order Across Space and Generation*), Genta Publishing, Yogyakarta, 2013, p. 137

Indonesia?

B. Research Methodology

In this study, Researcher uses the first and the second concept of law, namely to find the principle of truth and justice that is both natural and universally applicable. Also the positive norms in the national law legislation system. Thus, the approach is the method of normative or doctrinal research with the analysis based on deduction logic[1]. The fourth concept of law is the institutionalized social behavior patterns that exist as empirical social variables. Similarly, the fifth legal concept in social behavior is seen in the interaction among them. Also the symbolic meanings that are existed in human mind[2]. For both of these legal concepts the approach used is *socio legal* approach or with non-doctrinal approach, namely the law is not only seen as a set of normative rules or what become the text of law *(law on books),* but to see how the law interacts with people *(law in action).*

Research with qualitative approach, according to Soerjono Soekanto is an approach based on data that are expressed by the respondents in verbal or writing, and also their real conduct, being observed and studied as an intact entirety[3]. A qualitative approach is used due to several considerations that this method can more easily adjust to deal with reality. The normative juridical approach or normative law science assessment is that to clarify the law does not require support of data or social facts that are known only as legal material, which means that explaining the law or seeking the meaning and giving value to the law are only used by concept of law[4] and the steps being taken are normative.

Techniques for data collection are done by interviews and document study. The primary data are obtained through interviews and literature studies, which include library materials in the form of primary materials, namely books of jurisprudence, legal science journals, scientific articles of law, legal science research report, seminar materials, workshops and so on which are linked to the object of research. The collection of field data is obtained using communication technique[5] namely through personal contact or relationship between data collector and data source (the respondent). The communication technique is done by interviews[6] as a means of collecting data. The interviews were conducted using interview guidance that has previously been prepared. Analysis of data is performed using normative analysis method. At this stage the researcher carries out inventory of law and various legal norms. In this study the researcher is to understand and describe the law by using deductive logic. Deductive means a reasoning that comes from a common event, which justification has been known or believed to be and end at a conclusion that is more specific.

Analysis of data with non-doctrinal approach/social research method or empirical approach, the analysis is conducted using quantitative analysis with interactive approach *(interactive analysis model).* According to HB. Sutopo[7], what the interactive analysis model meant is that the data collected will be analyzed through three stages, reducing, presenting and drawing conclusion. The reduction of data aims to affirm, shorten, make focus, discard insignificant things that emerge from records and data collection. Presentation of data of a set of information which allows the conclusion of study be able to carried out to include various types of matrices, images, tables and so on. To draw conclusion, is an attempt to draw conclusion from all matters contained in data reduction and presentation of data where the data are previously tested their liquidity to make more powerful conclusion.

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[1] Setiono, *Pemahaman Terhadap Metodologi Penelitian Hukum (Understanding On Research Methodology of Law)*, Post Graduate Science of Law Legal Study Program, University of Sebelas Maret Surakarta, Surakarta, 2010, p. 23
[2] Setiono, *Op. cit*, pp. 22-24
[3] Soerjono Soekanto, *Pengantar Penelitian Hukum (Introduction to Legal Research)*, UI Press, Jakarta, 2006, p. 25
[4] Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum (Research Methodology of Law Science)*, Mandar Maju, Bandung, 2008, p. 87
[5] Hadari Nawawi, *Metode Penelitian Bidang Social (Research Methodology in Social Field),* Gajahmada University Press, Yogyakarta, 1995, p. 110
[6] Oloan Sitorus, et. All., *Cara Penyelesaian Karya Ilmiah di Bidang Hukum (How to Complete Scientific Paper in the Field of Law)*, Mitra Kebijakan Tanah Indonesia, Yogyakarta, 2006, p. 34
[7] HB. Sutopo, *Metode Penelitian Kualitatif (Qualitative Research Methodology)*, UNS Press, Surakarta, 2002, pp. 35-37

C. Result of Research and Discussion

1. Industrial Relations Court is more preferred by the disputing parties in the settlement of industrial relation disputes than arbitration

Actually, to have litigation through court is a very tiring job since the principle of fast, simple and low cost judicial has only been at the level of slogan[1]. Should there be any other way, avoid to settle disputes through PHI. There is a proverb that has been very popular among workers that is "to lose a case with cow to a goat" or "win burning, lost to ashes". Both these two proverbs would like to convey to seekers of justice that in order to get justice is not easy especially to do it instantly. Just think twice if the dispute at hand must be settled through PHI.

When PHI was began operating it is very long awaited by parties (specifically laborers) as a new thing in Indonesian employment. The parties assume that settlement through PHI would all be easy, with fast process, no cost, ad hoc judges representing workers and employers, trade unions/employers' organization can be the legal representative, no legal remedy of appeal and other matters that are of convenience. A similar opinion is also stated by Murni Manihuruk[2] that ideas of the government proposing the establishment of PHI is to make the settlement of industrial relation dispute faster and giving legal certainty. Statistically, the cases adjudicated through the Industrial Relations Court in the Central Jakarta District Court (PHI Jakarta)[3] since 2006: 220 cases; 2007: 376 cases; 2008: 351 cases; 2009: 362 cases; 2010: 313 cases; 2011: 310 cases; 2012: 263 cases; 2013: 260 cases; 2014: 304 cases. In average, there is a dispute case examined and tried every day by PHI Jakarta. In fact, the provision for settlement of industrial relation disputes at the level of PHI for 50 days (have almost never happened)[4]. The panel of judges who examine a dispute are likely to use the time based on SEMA (*Supreme Court Circular*) No. 6 of 1992, dated 21 October 1992 i.e., for six months. Similarly, at the stage cassation in the Supreme Court (which supposedly for 30 days) the time of solution is difficult to estimate since cassation has reached huge numbers coming from 33 PHI throughout Indonesia of being decided 1 to 4 years. Likewise, the cases originating from PTTUN being the first court for labor dispute as the appeal remedy from P4P, the solution in Supreme Court[5] also had a long time between 3 to 4 years.

Besides the limited number of judges both in PHI and the Supreme Court, there is also criticism to the judges who said "basically the judges only have general knowledge, so that therefore the judge is not an expert who has special expertise in a particular field, thus from a judge it cannot be expected to resolve the cases that require special expertise, such as disputes in construction, banking, acquisitions, shipping, industrial

[1] In average, settlement of dispute through PHI in Central Jakarta District Court are last for 3-6 months (processed from data of PHI in Central Jakarta District Court of 2006-2014)
[2] Interview with Murni Manihuruk, Head of Sub-Directorate of Institution and Empowerment of Officer for Settlement of Industrial Relation Dispute, the Ministry of Labor and Transmigration, dated 4 March 2014
[3] Processed from collection data of the Industrial Relation Court in the Central Jakarta District Court, dated 26 May 2015
[4] See:
- Case No. 136/PHI/G/2010/PHI.PN.JKT.PST, decided in 4 months
- Case No. 114/PHI/G/2010/PHI.PN.JKT.PST, decided in 6 months
- Case No. 122/PHI/G/2011/PHI.PN.JKT.PST, decided in 5 months
- Case No. 187/PHI/G/2011/PHI.PN.JKT.PST, decided in 4 months

[5] See:
- Judgment of P4P No. 845/787/77-14/II/PHK/9-1996, dated 30 September 1996 jo. Judgment of PPTUN No. 09/G/1997/PTTUN.JKT, dated 19 February 1998 jo. Judgment of the Supreme Court No. 283 K/TUN/1998, dated 14 December 2000 (4 years)
- Judgment of P4P No. 602/358/63-5/IX/PHK/2001, dated 1 May 2001 jo. Judgment PPTUN No. 227 /G/2001/PTTUN.JKT, dated 26 March 2002 jo. Judgment of the Supreme Court No. 250 K/ TUN/2002, dated 23 October 2002 (3 years, 6 months)
- Judgment of P4P No. 1110/1385/196-3/IX/PHK/7-2000, dated 24 July 2000 jo. Judgment of PPTUN No. 307/G/2001/PTTUN.JKT, dated 6 August 2001 jo. Judgment of the Supreme Court No. 117 K/TUN/2003, dated 26 October 2004 (4 years, 4 months)

(naturally including industrial relations) that require professionally special expertise[1]. The criticism on this judge's criteria are felt in PHI and according to Article 5 (2) of Law No. 48 of 2009 regarding Power of Justice (UUKK) it has also been determined the requirement on how the judge must have integrity and personality that is not dishonorable, dishonest, fair, professional and experienced in the field of law. The length of completion time is directly in proportion to the number of cases being filed in cassation and inversely proportional to the number of judges[2] who examine and adjudicate such cases[3]. But now a case is limited its time to be decided within three months due to the issuance of SK KMA No. 119/ 2013[4] by the existence of the Day of Deliberation and Pronouncement (PHM). Chairman of the Supreme Court can also access agenda of hearing *on-line* as the means of monitoring the effectiveness of certain regulation. The principle of court as defined in Article 2 paragraph (4) of UUKK, "the Court shall be carried out in simple, fast and low cost" as more affirmed in Article 4 paragraph (2) "The court helps the seekers of justice and tries to overcome all barriers and obstacles to achieve the goal of simple, fast and low cost justice" will not work well. There are so many problems occurred mainly on the part of the workers/laborers who have very weak understanding of employment law/labor. In addition, they don't have financial capacity to pay lawyer. This weakness led to the expensive cost spent by the workers/laborers to be greater. In the process of case examination there are also factors that influence the judge, both internally and externally. Regarding the less understanding of judges toward (labor) law science it resulted in the judge being preferred to apply procedural aspects rather than substantial, as in example of cases here below.

In the case between an employee of PT. Artika Optima Inti (PT. AOI) against PT. Artika Optima Inti (PT. AOI), initially the dispute was examined and decided by Regional Committee for Labor Settlement (P4D)[5] with a judgment: to terminate employment (PHK) between PT. AOI with the worker; providing severance pay to workers of ± Rp. 5.5 million. Toward this judgment, the employer made an effort of cassation to the Supreme Court by making memorandum of cassation. Since the worker did not respond or make counter memorandum of cassation (the worker did not receive notice of any cassation), and finally the employer's cassation was accepted. It is clearly seen how procedural justice was put up front in this case, as the civil procedural law is fulfilled, so did legal justice.

Another example is the case between 60 workers of PT. Bakrie Tosanjaya versus PT. Bakrie Tosanjaya[6]. PHI Bandung has rendered judgment that PT. Bakrie Tosanjaya: shall re-employ the workers on permanent basis as of the judgment becomes final and binding; to order to pay the workers' wages since November 2005 to September 2006 in the amount of Rp. 529,620,000.-. Toward this judgment, PT. Bakrie Tosanjaya submitted cassation to the Supreme Court and ultimately the Supreme Court rendered judgment: to grant the cassation request and overruled judgment of PHI Bandung. Even in adjudication by its own, the Supreme Court decided: to declare the workers' claim as unacceptable and ordered them to pay court fees in every stages of the judiciary and in the appeal stage at the amount of Rp. 500,000.-.

In the case of PT. Puri Zuqni[7], which sued 5 (five) of its employees who have worked with an average term of 12 years and always showed good performance. But the employer considers that the workers have recently shown declining achievement/performance, especially after the Bali Bombing II, which led the employer to

[1] M. Yahya Harahap, Citra Pengakan Hukum Suatu Kajian Pada Era PJPT II (Image of Law Enforcement, A Study in the Era of PJPT II), Varia Peradilan No. 117 Tahun X, June 1995, p. 151
[2] Number of supreme judges per-December 2012 was 44 out of 60 available position. The PHI cassation panel of judges were joined into the special Civil chamber, which examines and adjudicate other cases such as: HKI, Political Party, KPPU, BPSK, Arbitration, PKPU and Dispute on Information. The biggest was PHI cases (641 cases =71.46%; Report of MARI of 2012, pp. 5 and 74)
[3] See: Judgment No. 167/PHI.G/2008/PN.JKT.PST, dated 19 February 2009 jo. Judgment 730 K/Pdt.Sus/2009, dated 23 March 2010 jo. Judgment No. 19/PK/PHI/2011, dated 4 January 2013 (the required time was 3 years 7 months)
[4] See Report of the Supreme Court of Indonesia of 2013 p. 6
[5] See Judgment of Maluku P4D No. 22/18/02/XXV/PHK/11-2004, dated 11 November 2004 jo. Judgment of the Supreme Court No. 154 K/PHI/2006, dated 13 March 2007
[6] See Judgment of Case No. 85/G/2006/PHI.Bdg., dated 3 January 2007 jo. Judgment of the Supreme Court No. 192 K/PHI/2007, dated 13 June 2007
[7] See Judgment of Case No. 07/G/2006/PHI.PN.DPS, dated 16 August 2006 jo. Judgment of the Supreme Court No. 15 K/PHI/2006, 21 June 2007

conduct training though ultimately not succeeded in increasing their performance. Since the training was not successful, the employer filed the request for Termination of Employment (PHK) through PHI Denpasar. Due to insufficient power of the employer's legal reasons and arguments then PHI Denpasar dismissed the employer's request entirely. Toward this judgment, PT. Puri Zuqni submitted cassation to the Supreme Court and in its legal consideration, the Supreme Court declares PHI Denpasar has made mistake in the application of law since the workers have made "statement" that "if their work performance decreases, the workers are willing to resign". Under such considerations, the Supreme Court decided the case with the wording: to grant cassation request of PT. Puri Zuqni; to annul judgment of PHI Denpasar and to adjudicate by itself: to declare working relation between PT. Puri Zuqni and the workers is terminated; to order PT. Puri Zuqni to pay severance to the workers on average of Rp. 19.6 million.-.

Although the judge's legal consideration is so simple, normatively the procedure of cassation judgment in the case concerned is nothing wrong, and the the judge (especially PHI judge) still prefer the procedural aspects, namely how to implement the substantive rules that are set on what actions are allowed and should not be done[1] but substantively, the workers have been victims to the lost of jobs.

External factors may also affect the judges in carrying out their duties, namely the judge close personal relation with other law enforcement[2] (police, prosecutors and lawyers) who complicate objectivity of examination and decision-making. In addition, factors of the low legal awareness also influence the course of judicial proceedings. If the whole community share the same high level of law awareness, then any conspiracy, kickbacks, collusion, mob justice will not occur, so that independency of judges would be well maintained. In addition to these above factors, the factors of government, political and economic systems are also influential toward judicial process/independency of judges in Indonesia[3]. Due to these various factors, the workers and employers were given space and time or the freedom to choose[4] what mechanisms to be used to settle the dispute at hand. There is canalization[5] or new channels to overcome various obstacles in law enforcement through judicial/PHI, many disputes are taken to PHI, many others engaged in legal action, either cassation or judicial review, all of which will make the accumulation of cases in the Supreme Court.

2. *The importance and role the arbitration can do in the settlement of industrial relation disputes that make it necessary to empower*

The unfamiliarity of arbitration particularly among workers basicaly due to lack of socialization neither by the government nor trade unions/labor unions, which is called not well internalized. The internalization[6] means *"the acceptance by an individual of a rule or behavior because he finds its content intrinsically rewarding ... The content is congruent with the person's values either Because his values changed and*

[1] Read: Satjipto Rahardjo, *Ilmu Hukum (Science of Law)*, Citra Aditya Bakti, Bandung, 2012, pp. 77-78
[2] Bambang Sutiyoso and Sri Hastuti Puspitasari, UII Press, Yogyakarta, 2005, p. 62
[3] Amendement of the 1945 Constitution has been made four times (1999, 2000, 2001 and 2002), generally the first and second amendements contains limitation of President's power, position reinforcement of DPR (*People's House of Representative*), decentralization and reinforcement of HAM (Human Right). The third and forth amendements contain changes of government system into presidential system, the lessening of power of MPR (*People's Consultative Assembly*), the formation of several new state institutions (DPD [*Regional Consultative Assembly*], Yudicial Commission, Constitutional Court and General Election Commission), read: Aidul Fitriciadi Azhari, *Rekonstruksi Tradisi Bernegara Dalam UUD 1945 (Reconstruction of Tradition of State Living In 1945 Constitution)*, Genta Publishing, Yogyakarta, 2014, pp. 80-81
[4] Criticizing court institutions in Indonesia, Satjipto Rahardjo opines that in order to spread fora of justice, it should not be concentrated in one institution called the court. Marc Galanter provide a great imagery that there should be *justice in many room.* The idea of *Alternative Dispute Resolution* (ADR) has been stored a long time since the wave motions on *access to justice movement* which requires the existence of alternative pathways out of state court (read: the Supreme Court, Various Selection on Arbitration, Library and Information Service of Legal and Public Relations Bureau of Administration of MARI (*Supreme Court of Indonesia*), Jakarta, 2011, pp. 93-94
[5] canalize: to make a river wider, deeper or straighter; to make a river into a canal; Borrowing engineering terms, canalization is the effort to open up new channels for the water that have been deposited in a reservoir need to be transmitted/channeled to benefit the surrounding area and the dam reservoir is not an excess of water that can lead to the burst of the reservoir, see: AS Hornby, *Oxford Advanced Learner's Dictionary of Current English,* Oxford University Press, New York, 2003, p. 170
[6] L. Pospisil, *Anthropology of Law: A Comparative Theory*, New York: Harper & Row Publisher, 1971, pp. 200-201

adapted to the Inevitable". Individual worker (eventually as group) does not accept the existence of arbitration because they do not find valuable intrinsic value in it. The content should also be able to accept the change and adjust to situation. It means that the advantage of arbitration if the parties (especially the workers) are willing/agree to choose arbitration as a dispute resolution mechanism. Due to polarization of the parties all these time by the mechanism of PHI, the arbitration as new legal mechanism must be empowered with instruments that are easy to absorb by workers, in particular. As an instrument for social change, the law needs two interrelated processes, namely the institutionalization and internalization of behavior patterns. The institutionalization pattern behavior refers to formation of norm with provisions for enforcement and internalization pattern behavior, which means the merged value or values that are implied in law[1].

Settlement of dispute through arbitration has five advantages[2] i.e., *first* the settlement of labor disputes can be resolved in a relatively short time due to the absence of appeal. *Second*, the costs are relatively cheaper since there is no cost of claim or cost of appeal. *Third*, the parties choose the arbitrator pursuant to their will and to the arbitrator they bind themselves to submit to the award. *Fourth*, encourage the creation of a conducive environment for the disputing parties to maintain their cooperative relationship that had been disrupted. *Five*, more informal of arbitration process and produces a non-sided decision. In addition, the settlement through arbitration is less formal than (court) litigation and strict evidentiary rules are not followed. Settlement process of a dispute is differentiated into two ways, which are competitive or cooperation (collaboration) and whether a third party decides the dispute or the parties negotiating the settlement of their own or with the help of a third party[3]. Arbitration is categorized as a dispute resolution process that uses a compromise and negotiation but still argue before the third party, which will decide[4]. In customary law system of Indonesia it has long been known the process of achieving consensus *(Community consensus-finding),* which also functioned to build and protect the community[5].

In addition to arbitration, there are also other procedures such as negotiation and mediation, in which the involvement of third party as an expert is sufficiently important to help the parties reach an agreement. Unlike arbitration, mediation and conciliation can not produce binding decisions that can be implemented[6]. Mediator can not force the parties to reach settlement, so do the conciliator who has no power to impose his decision to the parties[7]. Therefore, in addition to capability to produce decisions which are final and binding, other features contained in the arbitration process seems to be of more value than adjudication in court, among others freedom of the parties to choose the judges they want, including choice of law (*Lex arbitri),* which will be used; which will protect the confidentiality of the parties from damages if the information in the process of adjudication is disclosed to public and an arbitration process that is faster and cheaper as the benefits of these freedom[8].

In the process of arbitration, each disputing party is given the opportunity to be heard separately and submit arguments to strengthen their argument. The element of parties' agreement to use arbitration and is subject to the final and binding arbitration award shall serve as illustration that the entire arbitration process wishes to maintain the contractual relation among the parties who are in dispute. In fact, the general desire of the parties to resolve disputes through arbitration shall be the sign that they have a relationship commitment in

[1] *As an instrument of social change, law entails two interrelated processes, the institutionalization and the internalization of patterns of behavior. Institutionalization of a pattern of behavior refers to the establishment of a norm with provisions for its enforcement* (*such as desegregation of public school), and internalization of a pattern of behavior means the incorporation of the value or values implicit in law (for example, integrated public school are* "*good*"), baca: Steven Vago, op. cit, p. 294
[2] Zack "*employment disputes"* 107-108. See also: Roger L. Anderson and James W. Robinson, *Is Arbitration The Answer In Wrongful Termination Cases*? Labor Law Journal, 42 (February 1991, No. 2): 121, as quoted by Aloysius Uwiyono, *Hak Mogok Di Indonesia (The Right To Strike In Indonesia)*, Post Graduate Program of FH-UI, Jakarta, 2001, p. 276
[3] Gary Goodpaster, *"Tinjauan Terhadap Penyelesaian Sengketa (Review Toward Settlement of Dispute)*" (paper), as quoted in *Arbitrase di Indonesia (Arbitration in Indonesia) (Serial on Basics of Economic Law 2)*, Ghalia Indonesia, Jakarta, 1995, p.4.
[4] *Ibid*, p.3
[5] *Ibid*, p.1
[6] Eman Suparman, *Arbitrase dan Dilema Penegakan Keadilan (Arbitration and Dilemma in Enforcement of Justice)*, PT. Fikahati Aneska, Jakarta, 2012, p.75
[7] *Ibid*
[8] Gary Goodpaster, *Op. Cit,* pp. 7-8

long-term[1]. Settlement of dispute through arbitration is considered able to produce a compromise decision and can be accepted by both disputing parties[2]. Therefore, the relationship of the disputing parties can still be maintained even be improved as both already know and realize the shortcomings and weaknesses they have done. Given the nature of arbitration as one alternative of dispute resolution out of court, it would have an impact on the burden of the judiciary especially the Supreme Court to become lighter[3]. Therefore, the efforts such as recognition over the absolute competence of arbitral institutions and the implementation of the arbitration award in accordance with the law, are few steps that can be taken to advance the arbitration institution[4].

3. *Political law perspective on empowerment and model of the ideal arbitration in industrial relations disputes in Indonesia*

The national politics of law, especially the politic of labor still consistently uphold the freedom and rights of the parties to resolve disputes both litigation and non-litigation although culturally the best solution is through deliberation[5]. In settlement through deliberation neither side feels defeated nor those who are victorious, and it is called *win-win solution"*[6] In the deliberation meeting, it does not mean that the parties do not comply with the existing rules, even the discussion itself is based on the existing rules under values of justice and solidarity, the decision is fair for the common good.

To realize the change in attitude of the workers doing the choice of arbitration to resolve disputes they face, the application of responsive law of Nonet and Selznick is something imperative because one of characteristics of this law is accommodative to accept social changes in order to achieve justice and public emancipation. Therefore the ordre of responsive law as cited by Bernard[7] stresses (i) Substantive justice as the basis for the legitimacy of law; (ii) Regulation is a sub-ordination of principles and policies; (iii) Legal consideration must be goal-and impact oriented for the benefit of society; (iv) Highly recommended to use discretion in decision-making with goal orientation at all times; (v) Bring up liability system as a system of coercion; (vi) Morality of cooperation as moral principles in applying law; (vii) Power is utilized to support vitality of law in serving community; (viii) Rejection upon the law must be seen as a lawsuit against legitimacy of law; (ix) Access of public participation is widely opened in the frame of integration of law and social advocacy. The politic of law from the theory of Nonet and Selznick inspires *stakeholders* to make changes toward UUPPHI although it does not include the empowerment of arbitration as a mechanism for settlement of industrial relation disputes, especially concerning its competence to examine and decide a dispute. A request for *judicial review* filed by various parties to the Constitutional Court since in 2003 due to several provisions in articles of Law No. 13 of 2003 regarding Labor that cannot accommodate the settlement of various problems of society, namely:

1. Constitutional Court Judgment No. 012/PUU-I/2003, dated 28 October 2004

[1] Steven Vago, *Law and Society (Fifth Edition)*, Prentice Hall, New Jersey, 1997, p.242, quoted Austin Sarat, *Alternatives to Formal Adjudication*, 1989, pp.33-40. "*In General, willingness to submit disputes to private but formal arbitration is characteristic of parties who have a commitment to long-term relationships*."

[2] H.Sudiarto and Zaeni Asyhadie, Mengenal Arbitrase Salah Satu Alternatif Penyelesaian Sengketa Bisnis (Familiar the Arbitration, One of Alternatives of Business Settlement of Dispute), Raja Grafindo Persada, Jakarta, 2004, p35, quoted Erman Rajagukguk, Arbitrase Dalam Putusan Pengadilan (Arbitration In Court Judgment), Chandra Pratama, Jakarta, 2000, p.1-2

[3] Harifin A. Tumpa, "Arbitrase dan Permasalahannya Didalam Praktek Peradilan (Arbitration and Problems In Court Practice)" (paper), as quited in Kapita Selekta Arbitrase dan Permasalahannya (Various Problematic of Arbitration and the Problem), Supreme Court of the Republic of Indonesia, 2003, p.24.

[4] *Ibid*, pp. 24-25

[5] In the course of this discussion we are taught about the values of justice and solidarity. In which the deliberation must be able to make fair decisions for common good. In time of deliberation and consensus, we are advised to abide all rules for the smooth of the deliberation. An attitude that needs to be followed as to honor arguments of others even if they are contrary to ours

[6] Book I Discussion on Draft Law of the Republic of Indonesia Regarding Settlement of Industrial Relation Dispute, Secretariate General of the People's House of Representative of the Republic of Indonesia, p. 50

[7] Bernard L. Tanya, Bernard L. Tanya, *Politik Hukum Agenda Kepentingan Bersama (Politic of Law, a Common Agenda)*, Genta Publishing, Yogyakarta, 2011, p.79

Wording of Judgment:

To declare Articles 158; 159; and 160 paragraph (1) in so far as relating to the clause "*.... not upon employer's complaint ... "*; Article 170 as long as relates to the clause "*.... except Article 158 paragraph (1) ... "*; Article 171 insofar as it concerns with the clause "*.... Article 158 paragraph (1) ... "*; and Article 186 in case of the clause "*.... Articles 137 and 138 paragraph (1) ... "* The Labor Law does not have binding legal force.

2. Constitutional Court Judgment No. 115/PUU-VII/2009, dated 10 November 2010

Wording of Judgment:

To declare Article 120 paragraphs (1) and (2) of Labor Law does not have binding legal force;

To declare Article 120 paragraph (3) of Labor Law does not have binding legal force for the phrase, "*In terms of the provisions referred to in paragraph (1) or sub-section (2) is not fulfilled, then ...*", not abolished, and that provision is not interpreted, "*in the case of a company there are more than one trade union/labor union, the number of unions/labor unions are entitled to represent it in negotiations with the employer in a company is a maximum of three unions/union or joint union/unions the number of members of at least 10% of all workers / laborers in the company"*;

3. Constitutional Court Judgment No. 37/PUU-IX/2011, dated 19 September 2011

Wording of Judgment:

The phrase "**has not been established**" in Article 155 paragraph (2) of Labor Law is contrary to the 1945 Constitution to the extent not understood as yet legally binding;

The phrase "**has not been established**" in Article 155 paragraph (2) of Labor Law does not have binding legal force to the extent not understood as yet legally binding;

4. Constitutional Court Judgment No. 27/PUU-IX/2011, dated 17 January 2012

Wording of Judgment:

The phrase "... employment agreement of specified time" in Article 65 paragraph (7) and the phrase "... an agreement for a specified time" in Article 66 paragraph (2) letter b of Labor Law are contrary to the 1945 Constitution to the extent that the employment agreement is not required to have transfer of right protection for workers/laborers whose work objects are still exist, despite the change of the company that carries out most of the work contract of other company or a service provider company of worker/laborer;

The phrase "... employment agreement of specified time" in Article 65 paragraph (7) and the phrase "... an agreement for a specified time" in Article 66 paragraph (2) b of Labor Law does not have binding legal force in so far as the employment agreement is not required the transfer of protection rights for the workers/laborers whose work objects are still exist, despite the change of the company who carries out most of the work contract of other company or a service provider company of worker/ laborer;

5. Constitutional Court Judgment No. 19/PUU-IX/2011, dated 20 June 2012

Wording of Judgment:

To declare Article 164 paragraph (3) of Labor Law as contrary to the 1945 Constitution to the extent of the phrase "*private company"* not understood as "permanent private company or private company not for temporary";

To declare Article 164 paragraph (3) of Labor Law in the phrase "*private company"* not to have binding legal force to the extent not understood as "permanent private company or private companies not for temporary";

6. Constitutional Court Judgment No. 58/PUU-IX/2011, dated 16 July 2012

Wording of Judgment:

Article 169 paragraph (1) letter c of Labor Law is contrary to the 1945 Constitution to the extent not understood as: "*The workers/laborers may apply for termination of employment to the institution in resolving industrial relation disputes in the event that the employer does not pay wages on time predetermined for 3 (three) months in a row or more, although employers pay wages in a timely manner afterwards*"";

Article 169 paragraph (1) letter c of Labor Law does not have binding legal force to the extent not understood as:

"The workers/ laborers may apply for termination of employment to the institution in resolving industrial relation disputes in the event that the employer does not pay wages at a specified time during the three (3) consecutive months or more, although employers pay wages in a timely manner afterwards"

Politics of labor as part of the national legal system will continue to roll in accordance with the changing times by continually pleading amendment or revision of the Labor Law. UUPPHI should not be used as a *canopy* (bastion)[1] for established persons and the haves (employers) and the disadvantage of the poor (workers). Laws must serve society as a whole. Strengthening and institutionalization of arbitration as an alternative dispute resolution is an attempt to overcome delays upon settlement of disputes through courts *(ordinary* court)[2]. The form of Arbitration empowerment can be done through various approaches:

(1). An institutional approach, how the arbitration to have a clear structured organization and with duties and functions (competence) supported by professional human resources available in sufficient quantities. Easily accessible with the support of complete information;

(2). The sociological approach, so that people always put deliberation as priority, and enmity did not occur after the dispute is settled, arbitration is the right answer to it as presented by Harifin A. Tumpa[3], namely:

a. Guaranteed confidentiality of the parties dispute

b. It can be avoid any delays caused by procedure and administrative

c. The parties may select arbitrators whom they believe to have knowledge, experience and sufficient background about the issues in dispute and fair

d. The parties may determine the choice of law to resolve the problem as well as the place of the arbitration process

e. The award of arbitration is a decision that binds the parties and through a simple procedure or can be directly implemented;

(3). Legal culture approach

In order that formal legal system can run real, legal component which is able to move it is called by

[1] *Op. cit*, p. 80
[2] Yahya Harahap, *Citra Penegakan Hukum Suatu Kajian Pada Era PJPT II (Image of Law Enforcement, A Study In the Era of PJPT II)*, Varia Peradilan No. 117, Tahun 1995, p. 148-149
[3] See: Capita Selecta of Arbitration and Issues, the Supreme Court, 2003, p. 3; compare with the opinion of FF Ban der Hijden (op.cit, p. 9) that equates the arbitration court by mentioning four traits in common with arbitration court. But in fact, there is a fundamental difference between arbitration by court that is in the nature/initiative to choose mechanism to resolve dispute at hand where in the arbitration "the parties" should be agreed to submit the settlement of disputes through arbitration, while in the courts "one party" may file a lawsuit without approval of the other party (one of the principles of justice are the judges are passive, the justice seekers come to bring their problems to be resolved through judicial process, See: Satjipto Rahardjo, *Law,* Citra Aditya Bakti, Bandung, 2012, p. 192)

Satjipto Rahardjo as legal culture[1]. As the values, traditions and spiritual strength that determine how the law was carried out in society, the role of legal culture is crucial because legal culture will play a role whether a system of law will be executed or not.

Similarly, the arbitration as a mechanism for dispute resolution out of court has not run because it is not driven by the culture of law that has important position as stated by Uwiyono[2]. The same thing was also stated by Yuhari Robingu[3] uses the service of arbitration for disputes that are very complex, requiring the presence of third party authorized by the parties to establish a binding and fixed decision *(final and* binding). The ideal Arbitration in Indonesia is Pancasila Arbitration which contains the values of Pancasila as the state philosophy of Indonesia. Pancasila Arbitration emphasizes the realization of values of justice and deliberation. Therefore, in order to achieve both of these values, it is needed to be approached by:

(1) The principle of social justice.

Justice as one of the objectives of law (law of the other two objectives are legal certainty[4] and expediency). Justice[5] as formulated by John Rawls there are two (2) basic principles, namely: a). formal justice *(legal justice*), which is to apply equal justice for everyone in accordance with wording of the rules, and b). substantive justice *(substancial justice)*, which is the application of law in the meaning of seeking the true justice and supported by the sense of social justice. The Arbitration of Pancasila as a new institution that emphasizes the value of justice (social justice) can be felt by the seeker of justice himself and the society. The Arbitration of Pancasila, as a new mechanism to make changes or breakthroughs of responsive legal approach by leaving repressive laws[6]. Pressures or resistance toward Arbitration of Pancasila should be used as a self-correction that it needs to make way for the change. The idea of Arbitration of Pancasila as arbitration for industrial relation has experienced radical change, but researcher includes the values of Pancasila as the driving force of the working process of the Arbitration of Pancasila itself.

(2) The Principle of Consultative.

The philosophical values are embodied in this principle of deliberation[7] is the essence of people as subject of the main supporter of the country, so that therefore, the people are origin of power of the

[1] Satjipto Rahardjo, Ilmu Hukum, Pencarian, Pembebasan dan Pencerahan (Legal Studies, Search, Liberation and Enlightenment, UMS, Surakarta, 2004, p. 76-77

[2] Aloysius Uwiyono, *Peran Hukum Perburuhan Dalam Pemulihan Ekonomi dan Peningkatan Kesejahteraan Buruh (Labour Law Role In Economic Recovery and Improved Welfare Workers)*, Speech inauguration as a professor in the field of labor law, FH-UI, June 11, 2003

[3] Yuhari Robingu, *Memahami Hukum Dari Konstruksi Sampai Implementasi (Understanding The Law from Construction Up To Implementation)*, (Satya Arinanto and Ninuk Tryanti, ed), King Grafindo Persada, Jakarta, year not available, pp. 422

[4] According to Satjipto Rahardjo, legal certainty is associated with behavioral problems. Due to vast society has been mistaken to treat legal certainty with regulatory certainty. Once a law is issued then at the same time emerge regulatory certainty. When a law is issued then at the same time the regulation emerges. It means that when a legislation product is issued, in fact regulation is not the only factors that caused the incurrence of such certainty, but there are other factors such as traditions and behavior. So, Satjipto Rahardjo believes to have the potential to collide with certainty of Justice and expediency (Radbruch theory), read: Satjipto Rahardjo, *Biarkan Hukum Mengalir* (*Let the Law Flows),* PT. Kompas Media Nusantara, Jakarta, 2007, p. 80-81

[5] John Rawls, *A Theory of Justice*, *Chapter II The Principle of Justice*, Publisher: The Belknap Press of Harvard University Press Cambridge, Massachusetts, 1971, Translation by Susanti Adi Nugroho, First Edition, Kencana Prenada Media Group, p. 54

[6] Nonet and Selznick divide three legal order, namely:
- Repressive law, with signs of passive adaptation and opportunstic of legal institutions toward social and politic environment.
- Autonomous law, an opposing reaction toward wild openness. More priority to maintaining institutional integrity. The law isolates itself, narrowing its responsibility and accepting blind formalism in order to achieve an integrity (read: Philippe Nonet and Philip Selznick, *Hukum Responsif (Responsive Law)*, Nusa Media, Bandung, 2013, pp. 86-87

[7] In accordance with the basis and objective of the state and democracy according to 1945 Constitution is the led by wisdom of consultative representation derived from Indonesia own civilization/culture, mutual cooperation, kinship, deliberation for consensus, read: Committee of Five, *Uraian Pancasila (description of Pancasila)*, Mutiara, Jakarta, 1977, pp. 56-57

state[1]. So that the precepts contain the value of democracy, namely: 1). Freedom that must be accompanied by responsibility both to nation society and morally toward God Almighty; 2). Uphold the dignity of humanity; 3). Ensure and strengthen unity and integrity of living together; 4). Acknowledged individual differences, group, race, ethnicity, religion, cause the difference is an innate human nature; 5). Recognizes the inherent equality in every individual, group, race, ethnicity or religion; 6). Directing differences in a civilized humanitarian cooperation; 7). Upholding the principle of deliberation as civilized humanity moral; 8). Realizing and holding up a justice in social life in order to achieve a common goal[2]. This principle of democracy is also a driving force for workers and employers to guarantee freedom in the Arbitration of Pancasila as the institution, which will be used to settle disputes.

The spirit/principle of consultation becomes the main foundation in every stages of dispute settlement through Arbitration of Pancasila, with the following explanation:

- Any differences of opinion that occur between workers and employers must be resolved directly by negotiation or deliberation to reach consensus.
- If an agreement is reached in the deliberation, then the differences of opinion are considered ended and the parties shall return to their original position, as if nothing ever happened.
- If no agreement is reached in the deliberation, it must be proven by minutes on result of the meeting, then since that time there has been a dispute.
- The parties will resolve the dispute through mediation or conciliation. If mediation or conciliation agreement is reached, it will be made a conciliation agreement. But if the mediation or conciliation is not reached, then settlement agreement will be made through arbitration, therefore, the parties are obliged to make arbitration agreement.
- In the first arbitration hearing, the arbitrator/arbitral tribunal shall offer the parties to once again carry out deliberations.
- If an agreement is reached in that deliberation, the arbitrator will make a conciliation agreement.
- If not, the arbitral tribunal will initiate an arbitration hearing by examining files of the dispute.
- In this examination hearing, the arbitral tribunal shall also still offer the effort of deliberation, which then if an agreement is reached, the arbitral tribunal will make a conciliation agreement. But if not, the arbitral tribunal will pronounce the decision in the next hearing.
- Toward the decision (award) of arbitral tribunal, execution can be done after obtaining determination from Chief of local District Court.

D. Closing

1. Conclusion

Based on the above description, it is concluded that:

(1) As a new institution, the Industrial Relations Court (PHI) was nicely and enthusiastically welcomed by the parties who are concerned (*stake holders)* in hope that settlement of industrial relation disputes will be easy, with fast process, no costs, no ad hoc judges representing workers and employers, trade unions/ employers may serve as representative, no legal remedy of appeal and other conveniences. PHI is also based on the idea of good goal that settlement of industrial relation disputes can be more quickly with

[1] Kaelani, Pendidikan Pancasila (Education of Pancasila), op, cit, pp. 82-83
[2] Ibid

the accomplishment of legal certainty. After PHI operations since 10 April 2006, the provisions of UUPPHI have not been running properly among others concerning the time for settlement of dispute in the stage PHI from average of 50 days were completed in 4 to 6 months (see SEMA No. 6 of 1992, dated 21 October 1992). At the stage of Supreme Court (supposedly for 30 days) on average the cases were completed in 1 to 4 years, or not conformed to the provision of Article 2 (4) of Law No. 48 of 2009 regarding Powers of Justice (UUKK), "The justice is done in simple, fast and low cost", which affirmed by Article 4 paragraph (2) "The court helps the seeker of justice and tries to overcome all barriers and obstacles to achieve justice that is simple, fast and low costs" eventually lead to costs incurred by workers/laborers to be greater. In addition, there was also a factor that influencing judges, both internally and externally. Legal knowledge (labor law) of judges at the level of the PHI and the Supreme Court is not in accordance with Article 5 (2) UUKK, which states "must have integrity and personality that is not dishonorable, dishonest, fair, professional and experienced in the field of law" can be seen from various judgments that have been pronounced. External factors can also influence the judges in carrying out their duties, namely the closer personal relation of judges with other law enforcement (police, prosecutors and lawyers), which complicate objectivity of the examination and decision-making. In addition to these factors, the role of people's low legal awareness also helped influencing judicial process. Other external factors are the systems of government, the country's politic, economy, which also influence the judicial process/judicial independence in Indonesia. Due to these various factors, the workers and employers are given the space and time or the freedom to choose or canalize or new channels to overcome various obstacles in law enforcement through judicial/PHI.

(2) Arbitration is not an option for the parties to resolve disputes caused by lack of socialization by the government, trade unions/ union or not properly internalized. Internalization. Due to improper socialization, the workers found no intrinsic value that is valuable in the arbitration. Content also must be able to accept the change and adjust to situation. It means that workers do not find excellence in arbitration. To change the parties' mindset, arbitration as a new legal mechanism must be empowered with instruments that are easily absorbed by workers, especially through the institutionalization and internalizing patterns of behavior, establishing norm with provisions for enforcement and internalization values implied in law. In the process of arbitration, each party to the dispute shall be given opportunity to be heard and put forward arguments to reinforce their proposition. Award of arbitration shall be final and binding, while maintaining the contractual relation among the disputing parties. Even so, through arbitration it shall be a sign that the parties have a long-term commitment in their relationship. Bearing in mind toward the nature of arbitration as an alternative dispute resolution out of court, it would have an impact on the burden of judiciary, especially the Supreme Court, which becomes lighter. Therefore, the efforts toward recognition on arbitration absolute competence and execution upon arbitral awards according to statutory provisions are few steps that can be taken to advance the arbitral institution.

(3) Politic of law perspective, especially the politic of labor upholds freedom of the parties to choose settlement of disputes through litigation and non-litigation by putting up front deliberation of *win-win* solution. The deliberations should remain be based on rules, values of justice, solidarity, fair judgment for common interest. Improvement of regulation shall be done by proposing amendment through constitutional court on the competence of arbitration (even to hold revision upon Labor Law and UUPPHI). These efforts should be supported by *political will* of legislators. The offered Arbitration model of industrial relation is the Arbitration of Pancasila. Constitutionally, Pancasila is the foundation of the state that contains values that live in community. Actualization upon these values are among others through the Arbitration of Pancasila. The principle of consultation is the keyword for Arbitration of Pancasila. Therefore, every stage of the settlement of disputes through the Arbitration of Pancasila, must pass through the consensus. By the politic of law perspective, the Arbitration of Pancasila becomes the choice for the disputing parties. Paradigm of society is changed by making PHI as the parties' last resort to settle their disputes/*ultimum remedium*

2. *Suggestion*

Based on the above conclusions, it is suggested the followings:

(1). Substantially, the provisions regulating the arbitration are sufficient but still need to be improved, institutionally concerns mainly with competency, working mechanism so that the dispute resolution process be fast to result in low cost (affordable mainly by workers), the availability of professional arbitrators who are able to carry out their duties properly and produce mutually acceptable decisions (awards).

(2). The role of government, unions and employers associations to intensively internalize that arbitration is one of the best options to resolve the dispute. The success of this socialization will help ease the burden on the courts and the Supreme Court against the pilling up cases.

(3). With a populist political labor, the socialization upon the Arbitration of Pancasila, which contains national values embedded well in community, will facilitate the acceptance upon the Arbitration of Pancasila as the main alternative dispute resolution. With the Arbitration of Pancasila, the fair, democratic and dignified industrial relations will be well maintained.

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