

MODEL OF DETERMINANT FACTORS OF INDUSTRIAL RELATIONS (ANALYTICAL STUDY OF INDONESIAN LAWS ON TRADE UNION)

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ABSTRACT

In Indonesia, Trade Union was legally specified in Law No. 21 of 2000 regulating several provisions relating to the functions, roles, objectives and formation of trade unions. The role of trade unions as mediators between the interests of companies and workers is needed to create harmonious industrial relations. The advocacy for the implementation of Law No. 21 of 2000 concerning Trade Unions/Labor Unions is a series of mentoring in the form of recommendations, assistance, and statements for the interests of workers. The purpose of this study is to produce an advocacy determinant model of the implementation of Law No. 21 of 2000. By using the approach of normative and empirical juridical methods, the results showed that trade unions have played a role in advocacy for the establishment of trade unions, the creation of Collective Labor Agreements, work agreements, bipartite advocacy, tripartite advocacy and settlement of industrial relations disputes. The model revealed that the level of education, communication, openness, and infrastructure are elements that strengthen the advocacy of trade unions.

Keywords: Advocacy, Trade Unions, Industrial Relations, Determinant Factors.

INTRODUCTION

The success of a company is much influenced by the conditions of qualified human resources and conducive environment and relationship between stakeholders in a company (Berman et al., 1999). The role of the corporate management is to create and maintain harmonious industrial relations by carrying out good communication and being cooperative with the interests of workers (Harsono & Ambarepto, 2012; Mansyur, 2015). Industrial relations are necessary to create a healthy and fair working relationship system. The systems of industrial relations occur between companies, workers and the Manpower Office to achieve company goals in the production process (Swasto, 2011). The production process can run smoothly if each party involved in the company is able to manage and maintain a harmonious working relationship. Harmonious industrialization relations that are well-established are expected to allow production process run smoothly. Indonesia ratified ILO Convention No. 87 of 1948 by Presidential Decree No. 83 of 1998 concerning the Ratification of the Convention No. 87 On Freedom of Association and Protection of the Right to Organize (Charnovitz, 2008). There are statements that workers and employers are treated without discrimination, have the right to become members of

organizations both workers' organizations and corporate organizations without being influenced or intimidated by any party. After the Presidential Decree No. 83 of 1998, Indonesia stipulated Law No. 21 of 2000 concerning Trade Unions (hereinafter Law of Trade Unions). In this Law, it is explained that the purpose of the establishment of trade unions is to provide protection, defend worker rights and interests and improve worker welfare.

However, the reality is that there are still many companies that have not been able to accept the establishment of trade unions in the company. This condition can lead to disharmony of industrial relations in the company (Arslanov & Safin, 2016). Therefore, a work culture like this should not be sustainable for company and workers alike. Hence, it needs a determinant model of advocacy for the implementation of Law of Trade Unions that can bridge the interests of companies and workers so as to create a harmonious industrial relationship to improve the performance of the union workers and companies (Crossman & Abou-Zaki, 2003; Ningsih, 2015; Sumardiani, 2014). In this context, this study aims to analyze the Indonesian Law No/ 21 of 2000 concerning Trade Unions regulating several matters relating to the establishment of trade unions, functions, roles and objectives of the formation of trade unions. The study also proposes the advocacy determinant model in the implementation of Law No. 21 of 2000. The problems discussed in this study are how the advocacy determinant model of the implementation of Law No. 21 of 2000. In various industrial centers, such as in East Java, one of the industrial centers in Indonesia, there is a tendency for less harmonious relations between workers and employers. The establishment of trade unions in this context can be a forum for workers to aspire to their voices regarding the system and wages of work to the company. However, this relationship is still two-way, and the government needs to mediate this relationship. Although the concept of tripartite advocacy has been widely recognized (Casale, 2000; Han et al., 2010; Fischl, 2007). It's clear depiction in a particular model, has not been widely explored. The focus of this research in advocating the implementation of Law No. 21 of 2000 concerning Trade Unions is the originality of this study, where most previous research emphasizes the resolution of industrial relations disputes. Based on the legal basis of advocacy, this study seeks to examine the legal concepts needed in worker advocacy, and the factors that determine advocacy. Some important parties namely labor union, company, manpower office and industrial relations court were analyzed to determine the success of advocacy. The results of the study reveal the relationship model, determinants and implementation of advocacy in the context of industrial relations.

RESEARCH METHODS

This type of research is a qualitative descriptive study with a normative juridical (legal research) and empirical juridical approach. According to Nasution (2012), qualitative descriptive research is research by doing a description to give a clearer picture of social situations. This research focus is to evaluate and analyze the advocacy determinant model of the implementation of Law No. 21 of 2000 concerning Trade Unions. This research was conducted in East Java with informants namely labor unions, companies, Manpower Officers, workers. Data were obtained from primary data, namely the results of interviews with relevant informants. In carrying out this research in the East Java region, it was conducted in the Surabaya City Manpower Office and some companies located in this province. Data triangulation was conducted to obtain data validity. This study also uses secondary data in the forms of documents, labor laws, and observations in the field. Based on the results of interviews and literature analysis, the

determinant factors of industrial relations model is described and displayed at the end of this paper.

RESULTS

Trade Union and Legal Basis of Advocacy

Trade unions are organizations formed from, by, and for workers both in the company and outside the company, which are free, open, independent, democratic and responsible for fighting for, defending and protecting the rights and interests of workers and improve the welfare of workers and their families (Article 1 No. 1 of Law of Trade Unions). Trade unions are a place for workers to fight for the welfare of workers and their families. Trade unions function as mediators for the benefit of companies and workers (Zhang, 1997). Article 1 and Article 4 of Law of Trade Unions reveal the importance of trade unions as a means of creating harmonious, dynamic and just industrial relations, a means of channeling workers' aspirations in fighting for the rights of their members and share ownership in the company and assisting in making work agreements and settling industrial disputes.

Advocacy or assistance in employment is an activity or series of actions in the form of advice, assistance, statements and defense made against workers/members against a particular condition/problem. Advocacy activities for the implementation of Law No. 21 of 2000 concerning Trade Unions/Labor Unions include activities of Advocacy for the Making of Collective Labor Agreements (CLA), Bipartite Advocacy, Tripartite Advocacy and IRC Advocacy. Advocacy is regulated in Law No. 21 of 2000 concerning Trade Unions/Labor Unions, Law No. No. 13 of 2003 concerning Manpower and Manpower Minister's Regulation No. 28 of 2014 concerning Procedures for Making and Ratifying Company Regulations and Making and Registering Agreements Work together.

Article 124 paragraph (1) of Law No. No. 13 of 2003 concerning Manpower (Manpower Law) stated that trade unions can carry out advocacy in the making of CLA which contains the rights and obligations of employers, the rights and obligations of trade unions and workers, the validity period of CLA and party signatures who made CLA. Article 106 paragraph (3) of Manpower Law stated that the membership structure of the Bipartite Cooperation Institution (BCI) consists of elements of employers and workers appointed by workers in a democratic manner to represent the interests of workers, while tripartite cooperation institutions consists of elements of the government, employers' organizations and trade unions, with the functions of giving consideration, suggestions, opinions to the government and related parties in the formulation of policies and solving labor problems. Manpower Office can also provide advocacy as an institution that can provide services, protection and comfort to workers and companies. Employers have an advocacy role to create partnerships, develop businesses, expand employment and provide welfare in an open, democratic and fair manner. Trade unions have an advocacy role to assist workers in carrying out the work according to the rules, maintaining order and continuity of production, channeling aspirations in a democratic manner, developing skills and justice, promoting the company, fighting for welfare, making CLA and resolving industrial disputes. If industrial disputes cannot be resolved at the bipartite or tripartite institutions, the trade unions can submit labor disputes in the Industrial Relations Court (IRC).

Advocacy Determinants

There are several advocacy determinants that influence harmonious industrial relations, including:

1. Education;
2. Communication;
3. Openness;
4. Infrastructure.

First-Education

The level of education of trade unions influences the ability of trade unions to understand and implement labor laws and regulations properly and correctly. Legal awareness can be owned by unions that have a sufficient level of education. Trade unions as mediators need a sufficient level of education so that unions can better understand and understand what workers demand or can also understand the company's capabilities, so that in conducting mediators, unions can sit together with workers and companies in resolving disputes with the way of consensus. As a mediator, trade unions can also understand the company's interests for smooth production, the company must create a new policy with the aim of production effectiveness and efficiency, therefore the role of trade union advocacy is needed to advocate for workers to accept the new policy.

Second-Communication

This is one of the ways needed to create harmonious industrial relations. Often, conflicts between companies and workers due to errors in communication. The company considers workers only as factors of production that do not need to be involved in company plans, policy making. The company considers strategic policy to be the company's prerogative authority. This condition will be prone to cause miscommunication between company management and workers, and more likely to create a distant gap between companies and workers. This will make company goals unattainable because they are not supported by workers. Errors in communication can also lead to different interpretations and unexpected reactions arise. Therefore, to achieve the goals of the company and workers, it is the duty of the company in particular, and the union to disburse the clogged communication (Wardiningsih, 2012). This communication obligation is also for the government as a mediator in resolving industrial relations disputes in a tripartite context.

Third-Openness

This is needed so that each party implementing advocacy of Law of Trade Unions. Information fluency will facilitate the flow of inputs, criticisms, suggestions between parties involved. Companies need to convey the conditions and interests of the company to workers. The company's development plan is socialized to workers so that workers can find out about these conditions and can support all changes and new policies. Instead, the company's progress needs to be conveyed to workers. This is so that workers are given the opportunity to participate in share ownership for interested workers. Such an organizational climate will make workers feel comfortable, valued and enthusiasm for working and a high commitment arises. Openness of

workers can be realized with high responsibility and work discipline and adhere to all applicable regulations in the company.

Fourth-Infrastructure

Infrastructure facilities provided by the company are endeavored to support the existence of trade unions and good partnership relationships. Trade union infrastructure needs to be provided by the company so that the union can run the organization smoothly and comfortably. Vehicle facilities for trade union officials in attending organizational activities outside the company need to be provided by companies to improve the performance of trade unions. Other facilities and infrastructure such as dining room, rest room, and nursing room for mothers who have babies, polyclinics, sports rooms, and evacuation rooms need to be provided by the company quite adequately, so that employees feel comfortable working in the company (Helmi & Pilo, 2017). A healthy organizational climate will create high job satisfaction, and job satisfaction affects employee performance through organizational commitment. This means that with good advocacy will build harmonious industrial relations so that it will increase employee job satisfaction and high employee commitment. Employees who have a high commitment will support the performance of the union and improve their performance.

Advocacy Implementation

According to Law No. 21 of 2000 concerning Trade Unions/Labor Unions, advocacy is as follows:

1. Advocacy for CLA making;
2. Bipartite advocacy;
3. Tripartite advocacy;
4. IRC advocacy.

Collective Labor Agreement is an advocacy for the creation of a Collective Labor Agreement (CLA). This advocacy covers activities to accompany workers to draft until they get approval from the Manpower Office which includes, among others, the name, place of residence and address of trade unions and companies, number and date of registration of trade unions by the responsible agency, the rights and obligations of the company and workers, the period and date of entry into force of the CLA and the signatures of the parties making the CLA. Article 4 paragraph (2) number a states that the Trade Union/Labor Union has a function as a party in making collective labor agreements and settling industrial disputes. CLA Arrangements are also regulated in Law No. No. 13 of 2003 concerning Manpower, especially in Chapter XI of the Seventh Part, starting from Article 116 to No. 135. More specifically about the requirements, procedures for making, renewing, changing and registering CLA regulated by a Ministerial Decree in this matter is the Minister of Manpower No. 28 of 2014 concerning Procedures for Making and Ratifying Company Regulations as well as Making and Registering Collective Labor Agreements. Trade Unions/Labor Unions have a role in proposing negotiations on making and signing CLA (Article 28 paragraph (1) Regulation of the Minister of Manpower No. 24 of 2014. Trade unions are parties who submit requests for negotiations on making CLA as stipulated in Article 17 of the Minister of Manpower Regulation that “*entrepreneurs must serve*

trade unions/labor unions that submit requests in writing to negotiate the Collective Labor Agreement with the provisions.” These provisions include:

1. Trade unions/labor unions have been recorded based on Law No. 21 of 2000 concerning Trade Unions/Labor Unions;
2. Meet the requirements for making CLA as stipulated in Law No. 13 of 2003 concerning Manpower.

This CLA is very important for companies and workers because it regulates the rights and obligations of employers and workers, among others, regulating the terms of employment, work system, normative and non-normative rights paid, and sanctions for violations. Therefore, trade unions are the most active and take the initiative to hold negotiations. The high and low welfare of workers is very much determined in the making of this CLA, the professionalism of trade unions is crucial for the success or failure of fighting for the improvement of the welfare of its members because the unions have bargaining power for the company to approve workers' requests.

Furthermore, bipartite advocacy is an accompaniment carried out by a union when disputes are committed by a union with a company either normative or of interest at the company level, be it rights disputes, conflicts of interest, and disputes over termination of employment, regulated in article 7 No. Law 2 of 2004 (Rokhani, 2009). Bipartite dispute settlement means the completion of industrial relations between workers/labor unions and companies internally within the company without involving third parties (Pangaribuan, 2005). If there is an agreement between the union and the employer, it can be stated in an agreement between the two parties called a joint agreement. This is where workers need the role of trade unions to fight for the interests of workers because trade unions are considered to have sufficient expertise in the field of labor. Bipartite advocacy which is often accompanied by trade unions, among others in two conditions, that are violations of underpaid wages and violations in not carrying out the workers social security. These violates Law No. 24 of 2011 concerning the Social Security contained in Article 17 paragraph (2) concerning administrative sanctions in the form of fines, written reprimands and not get certain public services. In this context, advocacy from trade unions is reporting violations committed by the company to the Civil Servant Investigator, and the investigator following up on the matter to the state prosecutor's office.

Lastly, tripartite advocacy is an accompaniment carried out by trade unions when disputes at the bipartite level are not agreed by parties to the dispute, so disputes are submitted to the Manpower Office for mediation and recommendations are made by the Manpower Office. Tripartite advocacy that is often carried out by unions is in two conditions. First, unilateral termination of employment termination. This occurs when a company commits unilateral termination of employment. So the trade union advocates for workers affected by layoffs in accordance with applicable laws and regulations. Advocacy is done in the form of fighting to be able to work again, but if it is not successful the trade union will fight for the rights of workers who have not been fulfilled such as severance pay, the period of award and compensation in accordance with articles 150, 156-158 Law No. No. 13 of 2003 about Employment. Second condition is in the violations of employing contract employees continuously. This occurs when a company violates the hiring of employees continuously with contract employee status violating Article 65-66 of Act No. No. 13 of 2003 concerning Manpower. Advocacy carried out by trade unions fights for workers' rights to be appointed as permanent employees at both bipartite and tripartite levels. If that does not work, it will continue to the IRC level (Figure 1).

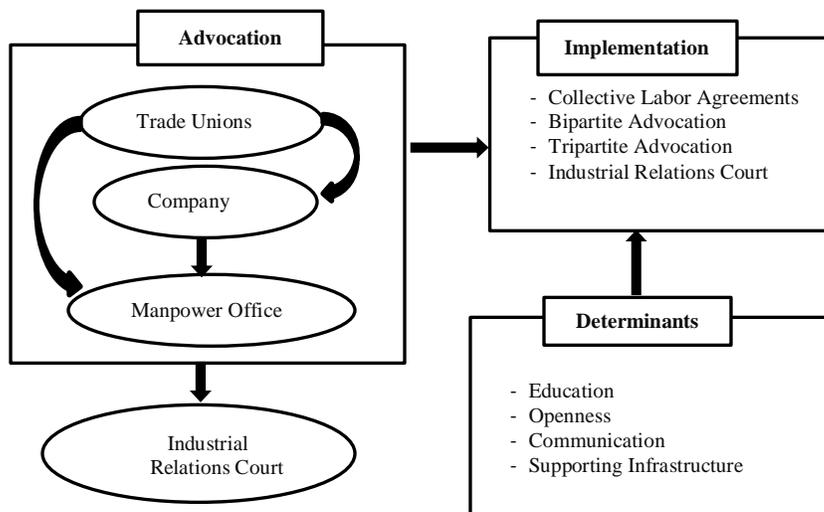


FIGURE 1

MODEL OF HARMONIOUS INDUSTRIAL RELATIONS DISPUTE RESOLUTION OF TRADE UNIONS

The Industrial Relations Court is a special court established within the district court that has the authority to examine, hear, and give decisions on an industrial relations dispute. Article 56 of Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement states that the industrial relations court has the duty and authority to examine and decide at the first level regarding rights disputes, at the first and last level regarding conflicts of interest, at the first level regarding disputes over termination of employment, and at the first and last level regarding disputes between trade unions/labor unions in one company.

Industrial Relations Court Trade union advocacy in the IRC level is advocacy carried out by trade unions when the results recommended by the Manpower Office (mediator) are not in line with expectations, the trade unions will follow up to the IRC by filing a lawsuit to the IRC in accordance with Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement (Nasution, 2017). Hence, the success of advocating the implementation of Law of Trade Unions is influenced by two things, that are advocates (companies, trade unions, Manpower Offices and IRC), and advocacy determinants (education, communication, openness and infrastructure).

The higher the performance of advocates in carrying out their advocacy role, the higher the success rate of advocacy for the implementation of Law of Trade Unions. The higher the level of education of trade unions, the better the communication of the company with trade unions and workers, the higher the openness of companies and workers and the higher the infrastructure provided by the company to workers, the higher the success of advocacy for the implementation of Law of Trade Unions.

CONCLUSION

Advocacy is carried out jointly between trade unions and companies (Bipartite Advocacy), between trade unions, companies with the Manpower Office (Tripartite Advocacy) and between trade unions and Manpower Office (Tripartite Advocacy), and between companies and Manpower (Tripartite Advocacy) and IRC Advocacy. The results of the study reveal that

trade unions have played a maximum role in advocacy for the establishment of trade unions, the creation of Collective Labor Agreements, work agreements, bipartite advocacy, tripartite advocacy and settlement of industrial relations disputes in Industrial Relations Court. Moreover, the levels of education, communication, openness, supporting facilities are elements that strengthen or succeed in advocating the implementation of Law No. 21 of 2000 concerning Trade Unions. The implementers of advocacy include trade unions, companies, Manpower Offices and IRC. The role of trade union advocacy is needed by workers in providing protection, defense of rights and interests, as well as improving decent welfare for workers and their families, because workers lack the knowledge to understand labor regulations. The findings show that corporate advocacy is needed in the context of handling disruptions and as a negotiator. Corporate advocacy has a significant effect in dealing with the problem of conflict between workers and their superiors as well as the problem of work indiscipline that is often carried out by workers. Advocacy that can be done by the company by giving verbal reprimand to make employees aware of more discipline. Advocacy by the company can be done through bipartite, the problem is solved by means of deliberation to reach consensus. Advocacy is needed when a company makes a new policy by socializing the policy first to the worker before it is set to be implemented, advocating for partnerships with trade unions and workers, opening and accepting workers' aspirations, is needed to open good communication between the company and workers. Manpower Office advocacy is carried out when disputes occur by giving recommendations to the parties to the dispute and providing guidance to companies and workers to be aware of the law and to comply with all labor laws. Manpower Office's openness in accepting labor issues submitted by trade unions needs to be addressed quickly, so that labor issues are quickly resolved properly, minimizing demonstrations carried out by workers and trade unions can be a social control for the performance of the Manpower Office, especially in resolving disputes in industrial relations.

REFERENCE

- Arslanov, K.M., & Safin, R.R. (2016). About the perspectives of legal regulation of labor relations. *Journal of Legal, Ethical & Regulatory Issues*, 19(SI), 31-36.
- Berman, S.L., Wicks, A.C., Kotha, S., & Jones, T.M. (1999). Does stakeholder orientation matter? The relationship between stakeholder management models and firm financial performance. *Academy of Management journal*, 42(5), 488-506.
- Casale, G. (2000). Experiences of tripartite relations in central and eastern European countries. *International Journal of Comparative Labor Law and Industrial Relations*, 16(2), 129-142.
- Charnovitz, S. (2008). The ILO convention on freedom of association and its future in the United States. *American Journal of International Law*, 102(1), 90-107.
- Crossman, A., & Abou-Zaki, B. (2003). Job satisfaction and employee performance of Lebanese banking staff. *Journal of Managerial Psychology*, 18(4), 368-376.
- Fischl, R.M. (2007). Rethinking the tripartite division of American work law. *Berkeley Journal of Employment and Labor Law*, 28(1), 163-216.
- Han, C., Jang, J., & Kim, S. (2010). Social dialogue and industrial relations in South Korea: Has the tripartite commission been successful? *Asia Pacific Viewpoint*, 51(3), 288-303.
- Harsono, M., & Ambarepto, A. (2012). Analysis of several factors affecting harmonization of partnership relations between workers and employers. *Human Resource Management*, 1(1), 15-31.
- Helmi, M.I., & Pilo, R.H. (2017). Independence of ad-hoc judges in the industrial relations justice environment. *Journal of Law and Justice*, 6(2), 233-258.
- Mansyur, R. (2015). Transparency of information in justice in the context of implementing integrity and legal certainty. *Journal of Law and Justice*, 4(1), 83-100.

- Nasution, R.D. (2017). The JKPS NGO advocacy model is light on migrant workers from the district of Ponorogo. *Legal Issues*, 46(1), 30-40.
- Nasution, S. (2012). *Research method: Scientific research*. Jakarta: Bumi Aksara.
- Ningsih, N.O. (2015). The role of trade unions and management in fostering industrial relations. *Journal of Business Administration*, 24(1), 1-11.
- Pangaribuan, J. (2005). *Practical guidelines for settlement of industrial relations disputes*. Jakarta: Bumi Intitama Sejahtera.
- Rokhani, E. (2009). Inter-Union conflict in three Indonesian factories. *Labor and Management in Development*, 9(1), 1-10.
- Sumardiani, F. (2014). The role of Indonesian migrant workers unions in protecting the rights of Indonesian workers abroad. *Pandecta: Research Law Journal*, 9(2), 257-272.
- Swasto, B. (2011). *Human resource management*. UB Press-Malang.
- Wardiningsih, S.S. (2012). Strategic management of industrial relations in minimizing industrial conflict. *Economics and Entrepreneurship*, 11(1), 285-292.
- Zhang, Y. (1997). An intermediary: The Chinese perception of trade unions since the 1980s. *Journal of Contemporary China*, 6(14), 139-152.