International Journal of Innovation, Creativity and Change. www.ijicc.net
Volume 15, Issue 6, 2021

Dualism of Judicial Decisions in the Court of Industrial Relations

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Law No. 2 of 2004 Article 7 (3) confirms that an Agreement shall apply as a binding law to the signing parties. The objectives of legal reform in Industrial Relations are to achieve legal certainty for the parties in dispute. Registration to the Court of Industrial Relations is necessary for settlement outside of the Court. The Court will subsequently issue a Deed of Evidence for the Settlement of Dispute. Unfortunately, it is permissible for one of the parties to cancel the said agreement unilaterally, leading to the Court's settlement. If the Court is consistent with the above provisions, it should be sufficient to check the Joint Agreement's existence and evidence of dispute settlement record issued by the same Court. Despite that, the Court should have rejected the Agreement; in reality, it continued the case until the final verdict. The previous precedence shows that the Court, in its consideration, always states that it considers the said documents as having no executorial power. Such a condition has caused a loss of legal certainty to the disputing parties in the dispute settlement process of industrial relations outside of the Court.

Keywords: *Dualism, Dispute, Industrial Relations, Joint Agreement, Claim, Laws*

I. INTRODUCTION

Development of the law has always attended to the changes of circumstances in practice. The growth of science and technology and the complexity of life among society in the globalisation era are demanding to enhance the state law's principles. Thus, the government and other institutions must always refer to and abide by the law whilst being legally responsible for conducting its accountability.

As the state of law (*rechtstaat or the rule of law*), Indonesia must have put the regulations or the applicable law on a pedestal. If any person conducts an act contrary to the regulation, he will be imposed with specific punishments due to the law's violation.

Likewise, in implementing the judiciary institutions as law enforcers, they should be equipped with exact regulations to perform their functions.

In terms of law enforcement, the author wants to contribute a line of thought in this journal on the enforcement of the Law of Special Civil Procedure within the hearing process of the Special Claim over the Joint Agreement ("JA") that has already obtained binding legal force and has executorial character. This writing is made as input and simultaneously represents a reaction of claim's existence over the JA between a Company and its Worker Union in settling disputes concerning employment termination ("ET"). Whereas, many parties have used the JA and register it to the Court of the Industrial Relations ("CIR"); yet, one of the parties still submits a claim. Such a condition provokes the JA's stance, where the laws regulate that it is only possible for a claim over JA to be submitted in case of default to the agreement's content. However, it turns out that in reality, a claim can also be submitted even when the parties have no problem in performing the agreement.

II. INDUSTRIAL RELATIONS DISPUTE SETTLEMENT MECHANISM

If we consciously stick to the purpose of law, we will recognise three consecutive firm notions throughout the history of law. First, the most unpretentious one is that the law is created to protect serenity within a specific society, to maintain peace in any condition at the sacrifice of anything. The law has the task to fulfill people's will of security, which at the lowest definition is stated as the purpose of law and order. Then, the law is a tariff incurred upon the exact arrangement of any detailed injury. It is incorrect to say that the principles of remedy works as the sole tool to urge or force all disputes to be settled at the Court; likewise, it is not focusing on the sanction alone.

Generally speaking, Munir (2013) said that the law has four functions in society:

1. Facilitating function, to achieve order;
2. Repressive function, to use the law as the tool for the elites in power to achieve their goals;
3. Ideological function, to guarantee the achievement of legitimacy, sovereignty, freedom, independence, justice, and others;
4. Reflective function, to reflect the joint will of the society, hence the law is supposedly neutral.

Aside from being settled through the court decision, the regulation in Article 7 of Law No. 2 of 2004 concerning the Industrial Relations Dispute Settlement (Law No. 2 of 2004) obliges any case to be first settled by bipartite negotiations between the parties.

Such regulation is meant to uphold the spirit of judiciary principles adhered to by Indonesia, namely fast, simple, and affordable. The provision of Article 7 of the Law No. 2 of 2004 is in line with Article 136 of the Law No. 13 of 2003; they oblige deliberations for consensus in settling the industrial relations dispute. With this spirit's implementation, the parties may resolve their dispute without bringing the dispute to Court, realistically saving much time and many costs.

The arrangement of the Industrial Relations Judiciary system in Indonesia through Law No. 2 of 2004 signifies a new hope for the justice seeker either for the workers or the business actors. There was a long experience in amending and developing the Manpower Law. It was followed by the arrangement of P4D and P4P (*Panitia Penyelesaian Perselisihan Perburuhan Daerah dan Pusat*/Regional and Central Labour Dispute Settlement Committee). Afterward, the issuance of the Law No. 13 of 2003, followed by the Law No. 2 of 2004, all show that the government is also wanting legal certainty for the justice seeker, notably in the case of the occurrence of industrial relations disputes.

The law has determined firmly that each dispute occurring (dispute on rights, interests, ET, or dispute between worker unions) between the workers and the business actors must be settled between the parties in dispute, namely through bipartite negotiations going to other lines of dispute settlement. This provision has long been considered accurate since it views the deliberation for consensus without any intervention from other parties to the best way of settlement for the disputing parties; hence, both parties will obtain a win-win solution.

III. THE LEGAL POSITION OF THE JA

A. JA AS BINDING LAW FOR THE PARTIES

Indonesia is a state of law; it is evident from Article 1 Paragraph 3 of the 1945 Constitution, which stated "hat: "*Indonesia is a State o" Law.*" According to such Constitution, Indonesia has a strong foundation where each of its citizens should follow and comply with the applicable provisions.

Article 1313 of the Indonesian Civil Code (hereinafter referred to as the Civil Code) regulates the definition of the agreement: Agreement is an *Act where there is one more person(s) who bind themselves to one or more other people(s).* This only states the bound between one party and another and does not mention on what purpose the agreement should be made (Soedjono, 1991).

Meanwhile, according to Subekti (1990), an agreement is an occurrence where a person makes a promise to the other or where the two persons promise one another to conduct certain matters, either verbally or in writing.

The pre-requisites for the agreement to be valid are stated in the Article 1320 of the Civil Code: consent to binding themselves in the same comprehension, there is a primary subject of matters promised, with no force (*dwang*), misinterpretation (*dwaling*), and deception (*bedrog*) (Soepomo, 1989a). The word consent is the main element from the four pre-requisites of an agreement; according to Soepomo (1989b), a work agreement must be based on the two parties' willingness.

JA/Collective Bargaining is a negotiation process between two parties, where the representative of the employees and the business actors achieve consent to obtain better results without harming the parties (Bangun, 2017). In other words, a JA is a written consent using the Indonesian language, made together by the Business Actors and the Workers registered in the institution responsible for the manpower field. JA is formed by putting the uniformity of will between the parties on a pedestal, either due to prior dispute or solely for harmonious industrial relations in the company, taking the interests of the parties into account.

If there are provisions that should have been used as the legal basis to enact the law or if the laws to be enforced are no longer in line with the age development and demand on the sense of justice, or if no laws are regulating such matters, the judge must explore, follow, and comprehend the values of law and the sense of justice living among the society. Consequently, the judicial power's independence at the judges' hand must be interpreted and implemented to manifest the ideal law, putting justice, expedience, and certainty at its core (Lotulung, 2010).

Industrial Relations Dispute refers to the difference of opinions that trigger conflict between business actors, or groups of business actors and the workers/labourers or labour union, may it be regarding the rights, interests, ET, or a dispute between the worker/labour union within one company (Article 1 paragraph (22) of the Law No. 13 of 2003 Jo. Article 1 paragraph (1) and Article 2 of the Law No. 2 of 2004). Industrial Relations Dispute may be settled peacefully without going through the litigation process; it may end in a win-win solution by creating a JA.

In the industrial relations dispute, specifically in the ET, the parties must go through bipartite negotiations first, with the duration not exceeding 30 (thirty) business days. If this negotiation may achieve consent on the settlement, then next, the negotiators shall draft a JA that shall be signed by the parties; thus, it shall bind and become the law that must be executed by the parties. After the JA has been signed, it must be registered to the CIR in the District Court ("DC"), where the JA parties concluded. The registration is mandatory since it will issue the Deed of Evidence for the JA Registration from the CIR in the DC where the parties have concluded the JA, and whereas the deed referred here shall be an inseparable part of the JA.

The underlying provisions for creating a JA are Articles 7, 13, and 23 of the Law No. 2 of 2004 and require negotiation to settle the dispute before any court decision. The term JA is used in its relationship with the bipartite negotiations. If a JA is made from the bipartite negotiations,

it will be registered to the CIR. If one of the parties does not comply with the provisions of the said JA, then the other party may request for the JA execution to the CIR. The same applies to mediation.

A JA that does not correlate with bipartite negotiations or mediation, as regulated in Law No. 2 of 2004, shall have no executorial power despite being registered to the CIR. The JA can still be submitted as a claim to the CIR even though it is not executed, as long as the JA is annexed within mediation or conciliation minutes.

It raises questions among the Worker Union since it holds the role of the proxy for its members. In contrast, it shall have the right to conduct either bipartite or tripartite negotiations with the business actors as well as to create a peace treaty in the form of JA, as stipulated in the provisions of the Law No. 21 of 2000 concerning the Worker/Labour Union in Article 1 paragraph (1), Article 4 and Article 25.

Articles 4 and 25 of Law No. 21 of 2000 concerning the Worker/Labour Union signify that the Worker/Labour Union no longer needs the proxy from its members, as long as these members can prove their membership in the Worker Union. Likewise, the same applies to the bipartite negotiations result with the business actors as the other party. It shall be considered as already agreed upon by its members.

Judges have functioned as law enforcers and finders; they differ in notions that are considered law and those that are not. It might seem as if the judges are holding the legislative power to create the laws; however, Article 21 AB answers this by stating that a judge cannot issue a decision that shall be applicable as a regulation for the public. It turns out that a law resulting from a judicial decision is different from the legislative products. The law resulting from a judicial decision shall not be promulgated under any State Gazette. Thus, it shall not be applied generally to the public, yet it shall only apply to the disputing parties. Such a condition follows Article 1917 (2) of the Civil Code, which states that the power from a judicial decision shall only apply to the subject matters adjudicated in such decision.

In several cases, a judge will occasionally face a condition where he must adjudicate a dispute that has no legal basis yet or has no precise legal regulation. In this sense, the judges must not refuse to adjudicate the dispute under the pretext that no available provisions regulate the dispute.

I. THE VALIDITY OF CLAIM SUBMITTED AGAINST THE JA THAT HAS BEEN EXECUTED

It is known that the employment relationship between the workers/labourers and the business actors is under the authority of the civil law since it involves the relationship between one

person and another in the society, and it focuses on personal (private) interests. It may trigger a conflict of interest if a party is harmed by the other, for instance, between the business actors and the workers/labourers and others. Therefore, following Article 136 of Law No. 13 of 2003 concerning manpower, people may enforce their rights under the civil law through industrial relations dispute settlement both inside and outside of the Court (Khakim, 2003).

The parties in the industrial relations dispute settlement, either business actors or workers, have the obligation to firstly put the effort in settling their dispute through bipartite negotiations. Whether the dispute is concerning their rights, interests, or dispute in the ET, there might be a different interpretation between the written laws and the execution of the JA. If the negotiations achieve a consent, then the negotiators shall draft a JA that must be registered to the CIR and made as a deed with the JA as an attachment. However, if no consent was achieved, the parties may conduct other efforts such as mediation, conciliation, and arbitration through manpower institutions or conciliation and arbitration bodies to settle the manpower dispute.

This journal is taking the primary subject matter in the making of consent into a JA between the business actors and the Worker/Labour Union, where it has been registered and obtained a Deed of proof for the Registration of JA to the CIR. Then, shall it be submitted as a claim by the Worker Union member who feels harmed by the JA?

It is commonly recognised that a registered JA has already bound the concluding parties and shall apply as the law to the signing parties. It shall hold an executorial power if it has been executed in good faith by the parties; then, it shall no longer be able to be filed as a claim to the Court. However, in practice, a JA signed by a Worker Union as the representative of its members can still be filed as a claim by one or more employees incorporated as the Worker Union member as the signing party. Ironically, this falsely placed claim is accepted and put on trial by the CIR. It is undoubtedly contra-productive with the legal force of the JA. Nevertheless, this acceptance made by the Court against the claim, aside from the existence of the JA itself, is inseparable with the provisions in Law No. 48 of 2009 concerning the Judicial Power, as elaborated in Article 10 Paragraph (1), Article 5 and Article 22 AB. The judges cannot refuse to examine, hear and decide any dispute submitted to the Court under the pretext that there are no existing or more transparent laws thereto, where they must explore, follow and comprehend the legal values and the sense of justice living in the society.

Mertokusumo (2015a) stated judges' power is the manifestation of the state power that can independently conduct judiciary process to enforce the law and justice based on the Five Principles (*Pancasila*) to accomplish the Republic of Indonesia as the State of Law.

Judicial power is standing-by and is passive. This means that if there is no dispute submitted, then the judge can only stand-by and wait (*wo kein klager ist, ist kein klager*).

Article 10 Paragraph 1 of Law No. 48 of 2009 elucidates the judges' stand-by or passive nature in terms of refraining from seeking dispute, yet, once the cases are submitted to him, he must examine and adjudicate them (Mertokusumo, 2015b).

Referring to the thoughts provoked by a highly qualified publicist (Gustav Radbuch), he argued that the application of a legal norm must be seen from the authority of the lawmaker and the factors that affected the implementation of the relevant law in society, to make the law applicable effectively. Some of those factors are stated as follows by Bambang (2013):

1. Legal Norm
   In the legal studies theory, one may differ the applicability of law as a norm in three categories: the juridical, sociological, and philosophical application of the norms.

2. Law Enforcer
   Law enforcer or the person on duty in implementing the hierarchy of law, starting from the lowest to the highest level such as the police, prosecutor, Supreme Court, and others.

3. Facilities and Infrastructure
   Facilities and infrastructure are essential for the implementation of the law, for example, the police officer, correctional institutions, and all required facilities.

4. Society
   Society is one of the determining factors for the applicability of the legal norms since basically the law is created for society's interest. In this sense, the goal of society is to obtain security, peace and justice.

II. THE DUALISM OF JUDGE ATTITUDE AGAINST THE CLAIM OVER A JA

The author shall give two case studies to explain the dualism phenomenon of opinion among the judges in facing the claim over a JA as follows.

A. DISPUTE ON THE TERMINATION OF EMPLOYEE AND CONFLICT OF RIGHTS BETWEEN THE PT. FRIGOGLASS INDONESIA VERSUS IIN MAIZAR SUPRIATNA

The existence of a claim submitted by an employee against a JA that has been signed by his representative (the Worker Union) can be found in the **Case No. 144/Pdt.Sus-PHI/2018/PN Bdg between PT. Frogoglass Indonesia vs. Iin Maizar Sulistiana.** It was already concluded in a JA on the Agreement on the Termination of Employment No. 001/PB/ PT FI – LKS FI/ I/ 2018 dated on 18th January 2018 between PT. Frigoglass Indonesia and the employee. Essentially, the employee's representative has agreed to the ET for 72 employees due to the

decrease of Company production, whereas the Company has been facing a loss for 5 (five) consecutive years. Moreover, in the JA, it was agreed that the Company should give compensation in the form of as much as 1 (one) time severance amount from the provision in Article 156 Paragraph (1) added with the policy money of as much as 4.5 months of wages, service period awards according to the Article 156 Paragraph (2) and the Replacement of Rights according to Article 156 Paragraph (4) of the Law No. 13 of 2003. Such JA was then registered to the CIR in Bandung.

It turns out that later, one of those 72 employees, Mr. Iin Maizar Sulistiana stated that he refused the content of the JA and filed a claim to the CIR in Bandung. In the subject matter of the case, the Plaintiff refused the ET and requested severance of 2 (two) times amount from Article 156 Paragraph (2) of the Law No. 13 of 2003. Besides severance, he requested the replacement of rights, unpaid wages of 6 (six) months, the interests and fines from the wages' tardiness, religious holiday allowance for 2018, and its tardiness fines.

The Company (Defendant) responded to the claim that there was already a JA between them and the Employee through the Indonesian Metal Worker Union and the Bipartite Partnership Institution. The Employee (Plaintiff) was a part of this institution. The remaining Employee from the 72 people stated that they had accepted the bipartite negotiations and received the offered compensation. Such a result is already written in the JA.

According to Plaintiff's' stiff' opinion (the Employee), according to the calculation of the offered compensation, upon the Termination of Employment by the Defendant against the 72 employees, including the Plaintiff, then he would receive a compensation in the form of severance, policy money, service period awards, and compensation of as much as Rp. 140,738,380.

However, the Panel of Judges in the CIR in Bandung continued the hearing until the decision dated on 14th November 2018 was issued which the verdict read as follows:

1. The Company ought to pay the severance of as much as Rp. 162,773,852 –
2. The Company ought to pay Religious Holiday Allowance of as much as Rp. 6,490,898.

In its legal considerations, the Panel of Judges in the CIR in Bandung, among others, declared that:

1. The Plaintiff is not bound by the JA between the Company and the Bipartite Partnership Institution, since the Plaintiff has never given any Proxy. In this case, the Worker Union is a part of the Bipartite Partnership Institution;

2. That the Bipartite Partnership Institution should not have taken the role as the proxy of the employee following the provisions of rules and regulations since it is only a communication forum;
3. JA, which was made between the PT. Frigoglass Indonesia and the Bipartite Partnership Institution is not legally binding to the Plaintiff;

Upon such *judex factie* decision made by the CIR in Bandung, the Company then filed a cassation, and on 8th May 2019, the **Cassation Decision No: 321 K/Pdt.Sus-PHI/2019** was issued, the verdict stated that:

In the Convention:
In the Exception:

- Reject the exception from the Convention Defendant in its entirety

In Main Subject of the Case:

- Reject the claim from the Convention Plaintiff in its entirety

In the Counterclaim:

1. Grant the counterclaim from the Counterclaim Plaintiff in part;
2. Declare that the employment termination between the Counterclaim Plaintiff and the Counterclaim Defendant has entered into effect as of 18th January 2018;
3. Sentence the Counterclaim Plaintiff to pay severance, service period award, compensation, and separation funds to the defendant in the total amount of Rp. 140,738,360.00

The Cassation Decision issued by the Supreme Court on the compensation for this Plaintiff, Iin Maizar, is the same as the calculation made by the Business Actor (Defendant) Plaintiff's rights due to the JA in the Termination of Employment between PT. Frigoglass Indonesia with the Worker Union and other employees.

In its legal considerations, The Supreme Court, among others, argued that:

1. Whereas the reasons for the cassation may be justified, since after accurate examination of the memorial of cassation dated on 17th December 2018 and the counter-memorial of cassation dated on 13th February 2019, in connection with the *judex facti* consideration, the CIR in Bandung DC has incorrectly applied the law with the following considerations:

2. Whereas following the statement of witness from the Defendant/Cassation Applicant under oath named Ratu Muhammad Rawis in his position as the Chairman of the Bipartite

Partnership Institution Defendant's company and the one who signed the JA on the peaceful settlement for the ET through the bipartite negotiations with the Defendant on 18th January 2018, (Exhibit T-8), it principally explains and confirms that the Plaintiff/Cassation Respondent has never provided a proxy to the witness and/or to the Bipartite Partnership Agreement to settle Plaintiff's ET with the Defendant. Therefore, the Plaintiff is not bound by a JA which has been signed between the Bipartite Partnership Institution with the Defendant's company management;

3. Whereas, the Defendant's Company has suffered the loss for 5 (five) consecutive years, evident from the financial statement from the Defendant's Company. The financial statement was audited by the Public Accountant Office from Tanureja, Wibisana & Partners and Purwantoro, Sungkono & Surya (*vide* evidence T- 7A, T-7B, T-7C, T-7D, T-7E & T-7F). Therefore, concerning the ET made towards the Plaintiff due to the Defendant's loss for 5 (five) consecutive years, the Plaintiff has the right to receive severance, service period awards, and replacement of rights following the provisions in the Article 164 paragraph (1) of the Law No. 13 of 2003 concerning manpower for such ET, with the following calculation:

a. Severance of 1 (one) time amount from the provisions of Article 156 Paragraph (2) of Law No. 13 of 2003 = Rp6,490,898.00 x 9 months x 1 = Rp58,418,082.00;

b. Service Period Awards in accordance with Article 156 Paragraph (3) of Law No. 13 of 2003 = (5,991,598.00 + Rp.499,300.00) x 5 months = Rp32,454,490.00;

c. Replacement of Rights, namely:

- Unclaimed annual leave in accordance with Article 156 paragraph (4) of Law No. 13 of 2003 = ((Rp5,991,598 + Rp.499,300) / 21) x 9 days = Rp2,781,813.00
- - Replacement of Housing & Medicines in accordance with Article 156 paragraph (4) of Law No.13 of 2003 = (Rp5,991,598 + Rp.499,300) x 15% = Rp13,630,886.00;

d. Separation money in accordance with Article 75 Collective Employment Agreement = (Rp5,991,598 + Rp.499,300) x 1 = Rp6,490,898.00;

e. Additional Policy Money:
Rp5,991,598 x 4.5 months of wages = Rp26,962,191.00

Total compensation of Rp140,738,360 (one hundred forty million seven hundred thirty-eight thousand three hundred sixty rupiahs).

From elaborating the case examples above, it is crystal clear that the judges in the Court of the first instance have dualism of attitude towards an agreement's object that should have already bound the parties.

B. DISPUTE IN THE TERMINATION OF EMPLOYMENT BETWEEN PT. SMM VERSUS 1 FORMER EMPLOYEE

The Plaintiffs were workers/labourers under the Employment Agreement for Unspecified Term (EAUT), which the Defendant terminated as of 1st January 2011.

Before the ET, on 30th December 2010, the Defendant held a meeting with the 37 workers whose employment would be terminated, including the Plaintiffs, to discuss the termination of employment and their amount of severance. The Defendant reached an agreement with the 37 workers during the meeting, which was expressed in a JA letter. The Defendant also made letters for the ET, which were submitted as evidence in the proceedings marked as T-1 and T-2

In the ET and JA letter as mentioned, it is conveyed that the ET was made for efficiency. Such a statement is in line with the evidence submitted in the proceedings marked as P-1 and T-3. Regarding the amount of the severance, it is stated in the JA letter that the workers shall have ***1 (one) time amount from Article 156 Paragraph (2) of Law No. 13 of 2003.***

With respect to the reason for the ET, which was claimed as the effort to achieve efficiency, the JA Defendant's attorney was then submitted a denial in the memorial of cassation; he argued that the real reason for the ET was due to the expiration of the contract for the project/work between the defendant and the PT. CPI. The misconception occurred since the Defendant did not clearly understand the definition of efficiency, whereas the correct statement should be that the ET had to be made due to force majeure.

In his claim's letter as registered to the CIR at the Pekanbaru DC, the Plaintiff requested that the Defendant had to pay severance of 2 (two) times the amount from the provisions in Article 156 of Law No. 13 of 2003 since the Defendant used efficiency as the reason for the ET. This request was also based on the mediator's recommendation for the industrial relations at the Government Office for Manpower in the Riau Province, No. 560/Disnakertransduk-HK/1308 dated on 17th June 2011. In the recommendation, the mediator advised the defendant to pay severance of 2 (two) times the amount from the provisions of th Article 156 of th Law No. 13 of 2003, since the ET was made under the reason of efficiency as regulated under Article 164 paragraph (3) of Law No. 13 of 2003. The Defendant has paid the severance of 1 (one) amount from Article 156 Paragraph (2) in this case; then he was advised to pay the remaining severance of Rp.226,678,403 - that has not been received by the total of 13 (thirteen) Plaintiffs.

After the proceedings had taken place at the CIR in Pekanbaru, on 24th November 2011, the CIR in Pekanbaru issued the **Decision No. 23/G/2011/PHI.Pbr**, with the following verdict:

In exceptions:

Reject the Defendant's exception in its entirety.

In the subject matter:

Grant Plaintiff's claim in part.

Order the Defendant to pay Plaintiff's rights of as much as Rp.226,678,403, - with the details as elaborated in the consideration, namely on page 21 of this decision.

Impose the fee for this proceeding to the Defendant in the amount of Rp.219,000

Upon this decision of the CIR in Pekanbaru, the Defendant submitted a cassation in the verbal submission on 5th December 2011, under the deed of cassation application No. 29/Kas/G/2011/PHI.PBR which was made by the registrar in the CIR in Pekanbaru. Against the submitted cassation, the panel of judges issued Decision **No. 237 K/Pdt. Sus/2012** on 25th July 2012.

Such a decision was based on the legal considerations:

Adjudicate:

- Grant the request for cassation, namely PT. SMM. Rescind the decision No. 23/G/2011/PHI.Pbr from CIR in Pekanbaru, issued on 24th November 2011.

Make Judgment on Own Authority:

In exceptions:

- Reject the Defendant's exception in its entirety.

In the subject matter:

Reject the Plaintiff's claim in its entirety. Punish the Defendant to pay the fee of the proceedings in this cassation of as much as Rp.500,000

Meanwhile, the legal considerations made by the panel of judges of the cassation proceedings in such decision are as follows:

a. The *judex facti* legal considerations assessed that in the T-2 evidence, there is no correlation between the JA letter dated 30th December 2010 and its attachment to one another, hence this evidence a quo must be disregarded and cannot be justified.

b. According to the legal considerations from the Supreme Court, the T-2 evidence specifically regarding the JA letter dated on 30th December 2010 and its attachments in the form of receipts signifying that the Plaintiffs have received the ET letter, recommendations, and severance slip, shows that the two sheets in the T-2 evidence are connected and inseparable, of which the relationship between the attachments as referred may be understood from the tone of the sentences in the JA a quo among others, reads as follow: "hereby attached the JA letter made by PT. SMM, the receipt of the ET letter, recommendation letter, and severance slip signed by each relevant worker or employee as the sign of approval."

c. Regardless of any reason used for the ET a quo, the Supreme Court considers that there has been consent made towards the ET disputed *a quo*, this is followed up by the acceptance of settlement/compensation given by the Defendants for the ET of the Plaintiffs, which was affirmed through the letter of the ET, recommendation, and severance slip. Therefore, according to the Supreme Court, consent has been achieved between the plaintiffs and the defendant in the Termination of Employment as stipulated in the JA dated 30th December 2010, as referred to in the provisions of Article 7 of Law No. 2 of 2004.

d. Consider that since between the Plaintiffs and the Defendant consent has been achieved in settling the dispute in the ET as referred to in the provision of Article 7 of Law No. 2 of 2004, the Plaintiff's claims which in its subject matter requested for settlement over the ET *a quo* must be rejected.

The panel of judges in the cassation in deciding such dispute is using the primary legal considerations outlined in the JA that has been made by the Plaintiffs and the Defendant on 30th December 2010, to grant the cassation submitted by the PT. SMM and to **rescind the decision of CIR in Pekanbaru No. 23/G/2011/PHI. Pbr.** (Nuroini, 2015)

Seeing the provisions of Article 7 of te Law No. 2 of 2004, one shall see that **the CIR should have made an injunctive relief which states that it rejects the claim submitted by the Plaintiffs since the JA has been registered and it should have the same position as the Law** for its makers. However, due to Article 10 of the Judiciary Law provisions, the judges were in a tight position to accept any dispute submitted from them, then the dispute, which was

supposedly rejected from the beginning, was still accepted and examined until the issuance of the verdict. Nonetheless, this does not describe the implementation of Article 4 Paragraph 2 of the Judiciary Law, where the Court must help and put the best endeavour for the justice seekers to overcome all obstacles and impediments to achieve a simple, fast, and affordable judiciary system. In such a condition, the principle of Legal Certainty becomes obscured or may even be said to have been violated by the Court itself.

Indeed, the existing provision has not made any notable breakthrough in this regard. Despite that, the provisions prohibit any submission of claim at JA's existence, yet the practice remains. The Supreme Court has never tried to enact its authority in creating the law (*rechtsvorming*). Article 38 and 79 of Law No. 3 of 2009 concerning the Supreme Court regulates that the Supreme Court has the power to create guidance to expedite the arrangement of the judiciary system in Indonesia if it has not been sufficiently regulated (Panggabean, 2001). This might be applied to ensure legal certainty of the JA as binding law for the Worker/Labour Union and the workers/labourers since the enforcement and implementation of the law often consists of more than the enactment alone; it also covers law findings (Mertokusumo, 2015c).

Legal findings are a compound activity; they turn abstract processes into concrete ones or the individualisation of the legal regulations (*das sollen*) with general character by bearing in mind the concrete events (*das sein*). Judges are always confronted with concrete events, conflicts, or cases that must be settled or resolved, and for that reason (Mertokusumo, 2018).

The judge may also formulate a new interpretation of the existing legal principles within the judicial decision; it may conclude as an amendment to the existing law since it shall be made as a reference to settle a similar dispute, profoundly known as the Jurisprudence. In the Netherlands, the jurisprudence is viewed as an independent source of formal law (Pointer, 2008).

Furthermore, as the State of Law, Indonesia should have provided legal certainty to any justice seekers. The Constitutional Court, as an institution mandated to check and balance the formation of laws in Indonesia, may actually conduct specific actions on this matter (Pendidikan, 2020). However, they have not done any extraordinary measures within their authority up to this date.

In terms of the two case studies, the author views that the judge in the first instance should have rejected the claim from the start since there had been a JA and the Deed of Record of the JA, which both applied as the law for the concluding parties. The judge may inflict a verdict different from the content of the JA; it is proven in the first case where the judge of the CIR in Bandung was in favour of the Plaintiffs by obliging PT. Frigoglass Indonesia to pay severance of 2 (two) times the amount from Article 156 Paragraph (2) of Law No. 13 of 2003. It is lucky enough that the Supreme Court overturned the *judex factie* decision despite all differences.

From the elaboration above, it is clear that a JA can still be submitted for a claim despite its binding power. The author believes that a JA that has obtained its executorial power should not be able to be submitted to the Court of Industrial Relations for the sake of legal certainty and justice. In this sense, the judge should only need to prove the counter-preposition instead of injuring the rejected claim. This will also uphold the function of a judge to take decisions under the objectives of the judiciary institution itself is to ensure the legal certainty, justice, and utility as well as to implement the mandate from Article 3 of Law No. 48 of 2009, namely, a quick and straightforward judicial process.

VI. CONCLUSION

1. Judges in Indonesia are prohibited from merely funnelling the laws. Judicial decisions must also fulfill legal certainty and the sense of justice besides merely fulfilling legal formalities or merely maintaining order. Judges should explore, follow, and understand the value of law and the sense of justice in society.
2. It is necessary to make a change in the provisions of Law No. 2 of 2004 where if there has been a JA related to the ET between the Business Actors and the Employee or the Work Union in the Company and the related Agreement has been registered to the CIR likewise implemented by the Parties, then it may not be submitted for a claim to the CIR.
3. Since the judges have the authority and the duty to resolve a conflict/case; then upon such authority, the judges must also be able to create a breakthrough in the form of legal findings against the disputes/cases which have not exerted regulation yet or have unclear regulations, especially in the case where there is a claim submitted against a JA that has been recorded in the Court of Industrial Relations.
4. The Supreme Court and the Constitutional Court can create a solution by consecutively creating guidelines for other courts and examining the formation of laws within the judiciary environment.

ACKNOWLEDGEMENT

The author would like to express the deepest gratitude to all parties who have been involved in the creation of this journal article. Praise to God Almighty that the author can submit this research in all humbleness and gratefulness for His mercy.

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